

FERNHOLZ

The Appointive and Removal Power
of the Governor of Illinois

Political Science


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THE APPOINTIVE AND REMOVAL POWER
OF THE GOVERNOR OF ILLINOIS

BY

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A. B. Indiana University, 1914

THESIS

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I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY SUPER-
VISION BY JOHN J. FERNHOLZ

ENTITLED The Appointive and the Removal Power of the
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PREFACE

The subject of this paper was selected for the purpose of showing the historical growth of the governor's appointive and removal power under the three different state constitutions and legislative enactments thereunder, with judicial interpretations.

The treatise has been divided into five chapters. Chapter I treats of the governor's appointive and removal power in general under the different state constitutions. Chapter II deals with the appointive and removal power of the governor of Illinois during the operating of the first constitution, and Chapters III and IV do likewise during the operation of the second and third constitutions respectively. Chapter V is a summary of the governor's appointive and removal power since the organization of the state government (1818) down to the present time (1914, with suggestions for reform to promote economy and efficiency in state administration.

Whenever the year is given at the bottom of a page as a reference it refers to the session laws of that year, and the number after it refers to the page.

The information to write this thesis was obtained from the sources indicated in the Bibliography found at the end of this discourse.

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. THE APPOINTIVE AND REMOVAL POWER OF THE GOVERNOR DURING THE OPERATION OF THE FIRST CONSTITUTION: 1818-1848.....	18
III. THE APPOINTIVE AND REMOVAL POWER OF THE GOVERNOR DURING THE OPERATION OF THE SECOND CONSTITUTION: 1848-1870.....	39
IV. THE APPOINTIVE AND REMOVAL POWER OF THE GOVERNOR DURING THE OPERATION OF THE THIRD CONSTITUTION: 1870-1914.....	53
V. CONCLUSION.....	83

CHAPTER I

INTRODUCTION

The office of Governor is one of high honor, great responsibility, influence, and power. In fact it is the highest office within the gift of the people of a state. Except as to the President of the United States, the electors exercise more discretion in his election than in that of any other official. He is looked upon as the vanguard of public opinion. He is regarded as the spokesman of the policies of his party. He is at the head of the state government and so is supposed to take the initiative to promote reform and efficiency in state administration, and to secure such results his appointive and removal power is an important weapon.

As this chapter will deal primarily with the governor's appointive and removal power under the present constitutions of the different states, and as some comparisons will be made between the appointive and removal power of the Governor of Illinois and the governors of some of the other states, it is necessary to quote in portion only,- for they are quoted in full in Chapter IV,- the provisions of the Illinois constitution that relate to the appointive and removal power of the governor, and the first that deals with this matter is, in substance, as follows:

Section 10, Article V. The governor shall appoint with the consent of the senate all officers whose offices are established by the constitution or by law and whose appointments are not otherwise provided for, and no such officer shall be appointed

by the general assembly.

Nebraska¹ and West Virginia² have copied this section, and many other states have a similar provision in their constitutions, but some of them do not have the concluding clause which prohibits the legislature from appointing officers. The states that have similar provisions are Louisiana³, Montana⁴, Idaho⁵, Colorado⁶, New Mexico⁷, New Jersey⁸, Vermont⁹, North Carolina¹⁰, and Utah¹¹; but the latter state constitution refers to state and district officers, while the North Carolina constitution refers to offices created by the constitution only.

Section 28, Article VI, says that all justices of the peace of the City of Chicago shall be appointed by the governor with the senate, but only upon the recommendation of a majority of the judges of the circuit, superior and county courts of that city, etc.

Many other state constitutions specially designate some of the officials the governor may appoint; for example: a bank examiner in Louisiana¹², Oklahoma¹³, and Wyoming¹⁴; a state examiner for other state officials in Arizona¹⁵ and Montana¹⁶; a mine inspector in Arizona¹⁷ and New Mexico¹⁸; a geologist in

1	Sec. 10, Art. 5	10	Sec. 10, Art. 3
2	" 8 " 7	11	" 6 " 4
3	" " 71	12	" " 97
4	" 7 " 7	13	" 1 " 14
5	" 6 " 4	14	" 14 " 4
6	" 6 " 4	15	" 18 " 22
7	" 5 " 5	16	" 8 " 7
8	" 2 " 7, ch. 9	17	" 1 " 19
9	" 11 cM. 2	18	" 1 " 17

Arkansas¹ and Wyoming²; a state librarian in Maryland³ and Minnesota⁴; a secretary of state in Delaware⁵, Maryland⁶, New Jersey⁷, Texas⁸ and Pennsylvania⁹; an attorney general in New Jersey¹⁰, New Hampshire¹¹, Pennsylvania¹²; in Florida prosecuting attorneys¹³ and state's attorney¹⁴; in New Jersey prosecutors of the common pleas;^{14a} in Massachusetts a solicitor general¹⁵; in New York a superintendent of public works;^{15a} in Delaware a commissioner of agriculture¹⁶; in Maryland a commissioner of the land office¹⁷, in Vermont a secretary of civil and military affairs¹⁸; in Georgia his own secretaries¹⁹; in Virginia superintendents and surgeons for penal institutions²⁰; in South Carolina a superintendent for the insane asylum²¹ and in New Jersey a prison keeper²², and clerks of the various courts.

A few of the constitutions also authorize the governor to appoint some boards or commissions. In Minnesota he can appoint a highway commission²³; in Virginia a corporation commission²⁴; in Ohio a commission to assist the Supreme Court in its work²⁵; in Virginia a commission of agriculture and immigration²⁶; in Kentucky²⁷ and Louisiana²⁸ commissioners to revise the states, and prepare a criminal code.

1	Sec. 2, Art. 10	15	Sec. 1, Art. 9, cl. 2, part 2
2	" 6 " 9	15a	" 3 " 5
3	" 3 " 7	16	" 3 " 11
4	" 5 " 5	17	" 4 " 7
5	" 10 " 2	18	" 1 " 5, parg. 19
6	" 22 " 2	19	" 0 " 8
7	" 2 " 7, cl. 2	20	" 148 " 11
8	" 21 " 4	21	" 2 " 12
9	" 8 " 4	22	" 2 " 7, cl. 4
10	" 2 " 7	23	" 16 " 9
11	Part 2 " 45	24	" 155 " 12
12	Sec. 8 " 4	25	" 22 " 4
13	" 27 " 5	26	" 143 " 0
14	" 15 " 5	27	" 245 " 0
14a	" 2 " 7	28	" 0 " 322

With respect to charitable and penal institutions he can also appoint: in South Dakota¹ and Louisiana² a board of charities and correction; in Washington³, New Mexico⁴, New York⁵, Virginia⁶, boards to supervise the different charitable and penal institutions; in South Carolina⁷, Idaho⁸, Kansas⁹, Ohio¹⁰, boards for the charitable institutions; in California¹¹ boards for the penal institutions.

Some constitutions provide that the governor shall appoint some of the supervising educational officers. In South Dakota¹² he can appoint a board to control the university, agricultural college, normal schools and other state educational institutions¹³; in Wyoming¹⁴ and Missouri¹⁵ boards to have charge of their universities; in Montana¹⁶, New Mexico¹⁷, Arizona¹⁸ and Washington¹⁹ an educational board; in Alabama trustees for the agricultural and mechanics college²⁰; in Ohio²¹ and Pennsylvania²² a state superintendent.

A number of constitutions authorize the governor to appoint some or all of the judges; for example, he can appoint: in Massachusetts²³, New Hampshire²⁴, New Jersey²⁵ and Delaware²⁶ all judicial officers; in Connecticut²⁷ and Louisiana²⁸ the superior

1	Sec. 2, Art. 14	15	Sec. 5, Art. 11
2	" " 295	16	" 11 " 11
3	" 1 " 13	17	" 6 " 12
4	" 3 " 14	18	" 3 " 11
5	" 11-12 " 8	19	" 1 " 13
6	" 148-52 " 11	20	" 266 " 14
7	" 2 " 12	21	" 4 " 6
8	" 6 " 10	22	" 8 " 4
9	" 1 " 7	23	" 1 " 9, part 2, cl. 2
10	" 2 " 7	24	" 0 " 45, " 2
11	" 1 " 10	25	" 2 " 7, ch. 2
12	" 148 " 11	26	" 3, 32 " 4
13	" 3 " 14	27	" 0 " 26
14	" 17 " 7	28	" 0 " 86, 109

court judges; in Mississippi¹ and New York² inferior judges; in Maryland³, Minnesota⁴, justice of the peace; in South Carolina⁵, magistrates; in Massachusetts⁶, Texas⁷, Maine⁸, Alabama⁹ and Oklahoma, notaries public.

As for the governor's removal power the constitution of Illinois makes the following provision: Section 12, Article V. The governor shall have power to remove any officer whom he may appoint, in case of incompetency, etc., and appoint another to fill the vacancy.

Nebraska¹⁰ and West Virginia¹¹ have ^{the} same clause in their verbatim constitutions, while the constitutions of New Mexico¹², Colorado¹³, and Michigan¹⁴ contain similar provisions, but in the latter state elective officers are included and the governor must exercise his power when the legislature is not in session. In Maine¹⁵, if no tenure is fixed the officer holds at the pleasure of the governor; in North Carolina¹⁶, if there are no contrary provisions, the officer holds until another is appointed by the governor or elected; in Delaware¹⁷ he can remove any officer convicted of misbehavior or any infamous crime; Maryland¹⁸ he can remove the secretary of state, and in New York¹⁹ the superintendent of public works; in Mississippi²⁰, South Carolina²¹, Louisiana²²,

1	Sec. 153, Art. 6	12	Sec. 5, Art. 5
2	" 7 " 6	13	" 6 " 4
3	" 42 " 4	14	" 7 " 9
4	" 5 " 5	15	" 9 " 18
5	" 20 " 5	16	" 5 " 14
6	" 0 " 4 (amdt.)	17	" 6 " 15
7	" 26 " 4	18	" 22 " 2
8	" 8 " 5, part 1	19	" 3 " 5
9	" 168 " 6	20	" 125 " 5
10	" 12 " 5	21	" 22 " 4
11	" 10 " 7	22	" 0 " 223

and Maryland¹ he can suspend defaulting treasurers. On an address of two-thirds of the members of the legislature, he can remove any officer in Delaware² and any executive judicial officer in South Carolina³. In Arkansas by the same method, he can remove the auditor, treasurer, secretary of state, attorney general, and prosecuting attorneys⁴. In Maine with the concurrence of the council and the legislature he can remove any officer⁵; in Pennsylvania some appointive officers, and with two-thirds of the senators any elective officer except the lieutenant governor, judges and legislators⁶; and in Florida any officer with the concurrence of the senators⁷, and in South Carolina any member of the boards of the charitable and penal institutions.⁸

Some states provide for the removal of judges by impeachment or by a concurrent resolution requiring a two-thirds or a three-fourths vote of the legislature. In a number of states the governor can remove them on an address, or by a concurrent resolution of two-thirds of the legislature. By one or the other of these processes the governor can remove the superior judges in California⁹, Connecticut¹⁰, Maryland¹¹, Massachusetts¹², Missouri¹³, Oregon¹⁴, Pennsylvania¹⁵, Texas¹⁶, and Arkansas¹⁷.

1	Sec.	15,	Art.	2	10	Sec.	0,	Art.	12
2	"	13	"	3	11	"	4	"	4
3	"	4	"	15	12	"	53	"	4
4	"	3	"	13	13	"	41	"	6
5	"	5	"	9	14	"	20	"	7
6	"	4	"	6	15	"	15	"	23
7	"	15	"	4	16	"	8	"	15
8	"	8	"	12	17	"	3	"	13
9	"	10	"	6					

With respect to filling vacancies, Section 11, Article V, of the Illinois constitution says that if a vacancy occurs during the recess of the senate in any office which is not elective the governor shall make temporary appointments, etc.

Nebraska¹ and West Virginia² have copied this section almost word for word, and some other states have practically the same provision; among these are Louisiana³, Montana⁴, and Utah⁵.

A clause in the Nevada constitution relating to the filling of vacancies has been copied or imitated in so many other states so it is here quoted: Section 8, Article V. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission which shall expire at the next election and qualification of the person elected to such office. The states that have wholly or in substance copied this article are: Arkansas⁶, California⁷, Florida⁸, Georgia⁹, Mississippi¹⁰, Missouri¹¹, Arizona¹², South Dakota¹³, Wyoming¹⁴, Texas¹⁵, Oklahoma¹⁶, while Vermont¹⁷ and Rhode Island¹⁸ have, in a line, something like it.

1	Sec. 11, Art. 5	10	Sec. 103, Art. 4
2	" 9 " 7	11	" 11 " 5
3	" " 72	12	" 8 " 5
4	" 7 " 7	13	" 8 " 4
5	" 10 " 7	14	" 7 " 4
6	" 23 " 6	15	" 12 " 4
7	" 8 " 5	16	" 7 " 3
8	" 7 " 4	17	" 11 cM. 2
9	" 1 " 5	18	" 5 Art. 7

With respect to filling vacancies in state offices, Section 20, Article V, of the Illinois constitution says that if the office of auditor, treasurer, secretary of state, attorney general, or superintendent of public instruction shall become vacant the governor shall fill the same by appointment, etc.

The same section is found in the constitutions of West Virginia¹ and Nebraska² only that the latter state has added a commissioner of public lands; and so far as naming the same officials, like sections are found in the Colorado³, Utah⁴ and Kansas⁵ constitutions. With respect to the appointive power only and designating the offices, similar provisions are in the constitutions of North Carolina⁶, Louisiana⁷, Rhode Island⁸, Ohio⁹, Massachusetts¹⁰, and Minnesota¹¹. In the latter he can also appoint any other state or district officer provided, of course, there is a vacancy.

Other vacancy appointments that the governor is authorized to make by constitutions are: in Pennsylvania¹² an auditor general, and a treasurer; in Maryland a comptroller¹³ and attorney general¹⁴; in Ohio¹⁵ and Kansas¹⁶ trustees of penal institutions; in South Carolina trustees of charitable and penal institutions¹⁷; in Arizona members of the corporation commission¹⁸; in Michigan members of the board of regents¹⁹.

1	Sec. 17,	Art. 7	10	Sec. 0,	Art. 17
2	" 20	" 5	11	" 5	" 5
3	" 6	" 4	12	" 8	" 4
4	" 10	" 7	13	" 1	" 6
5	" 14	" 1	14	" 5	" 5
6	" 13	" 3	15	" 3	" 7
7	" 0	" 97	16	" 1	" 7
8	" 0	" 11	17	" 8	" 12
9	" 18	" 13	18	" 1	" 15
			19	" 5	" 11

The governor can also make an appointment if a "vacancy occurs in any state office" in Michigan¹, Indiana², New Mexico³, Oregon⁴, Delaware⁵ and Kentucky⁶. In the last two states he can also appoint offices of a local character, provided the vacancy does not exceed a certain period of time.

With respect to vacancies in the courts, Section 32, Article VI, of the constitution of Illinois, among other things, provides that if a vacancy occurs in the office of a judge the governor may fill it provided the unexpired term does not exceed one year. The constitutions of South Carolina⁷ and West Virginia⁸ contain similar provisions but in the latter state the unexpired term may be as long as two years.

A great majority of the state constitutions authorize the governor if a vacancy occurs in some or all of the state courts to make an appointment.

Nearly all these appointments are made for the unexpired term or until the next annual or general election takes place. The states that contain such constitutional provisions are: Arkansas⁹, Arizona¹⁰, Alabama¹¹, California¹², Colorado¹³, Connecticut¹⁴, Delaware¹⁵, Georgia¹⁶, Indiana¹⁷, Kansas¹⁸, Louisiana¹⁹, Minnesota²⁰

1	Sec. 10,	Art. 6	11	Sec. 158-9,	Art. 6
2	" 18	" 5	12	" 3	" 6
3	" 5	" 5	13	" 29	" 6
4	" 16	" 5	14	" 26	" 26
5	" 9	" 3	15	" 18	" 4
6	" 152	" 0	16	" 3	" 6
7	" 41	" 5	17	" 5	" 4
8	" 7	" 8	18	" 11	" 3
9	" 21,50	" 7	19	" 0	" 131
10	" 3	" 6	20	" 10	" 5

Mississippi¹, Montana², Michigan³, Nebraska⁴, New Mexico⁵, North Dakota⁶, New York⁷, Oklahoma⁸, Oregon⁹, Ohio¹⁰, Pennsylvania¹¹, Rhode Island¹², South Dakota¹³, Texas¹⁴, Utah¹⁵, Washington¹⁶, Wisconsin¹⁷, Wyoming¹⁸,

A few state constitutions provide that if when appointments are vested in the legislature and a vacancy occurs during the recess of that body the governor may make a temporary appointment; among these states are: Indiana¹⁹, Oregon²⁰, and Tennessee²¹.

As to military affairs nearly all constitutions say that the governor shall be commander-in-chief of the military and naval forces of the state. Some constitutions provide that the governor shall appoint his staff officers; others that he shall appoint all general or commissioned officers; some designate the officials that he may appoint, and few say that the officials shall be appointed as the law may provide.

In briefly reviewing and summarizing up this chapter it is found that the first clause (Sec. 10, Art. 5) quoted from the Illinois constitution, provides that when an office is created and no provision is made for filling it the governor may make

1	Sec. 151, 177, Art. 6	11	Sec. 25, 8, Art. 5, 4
2	" 34 " 8	12	" 5 " 10
3	" 20 " 7	13	" 37 " 5
4	" 21 " 6	14	" 2, 28 " 5
5	" 4 " 20	15	" 10 " 7
6	" 98 " 4	16	" 5 " 4
7	" 4 " 6	17	" 9 " 7
8	" 3 " 7	18	" 4 " 5
9	" 4, 16 " 7, 5	19	" 18 " 5
10	" 13 " 4	20	" 16 " 5
		21	" 14 " 3

an appointment, about a dozen other states have a similar provision in their constitutions, but when an office is created a method for filling it is usually always provided, and so this section gives the governor very little appointive power.

The constitution of Illinois (Sec. 28, Art. VI) says, among other things, that all justices of the peace of Chicago shall be appointed by the governor on the recommendation of the judges of the courts of that city, but outside of this section the constitution is absolutely silent as to giving the governor any appointive power with respect to any designated office except in case of vacancy appointments, while a great majority of the states' constitutions authorize the governor to appoint at least one state official and in some states he can appoint two or three.

In a few states he can appoint all of the judges, and in about one fourth of them some minor court judges.

In some states he can also appoint boards, and commissions to supervise charitable, penal, educational institutions, and for other purposes, so the extent of the governor's power with respect to original appointments, the majority of the states are ahead of Illinois.

As for filling vacancies the Illinois constitution, (Sec. 11, Art. V) authorizes the governor, during the recess of the senate to make a temporary appointment to any office which is not elective. About a half dozen other states have a similar provision in their constitutions. The section quoted from the Nevada constitution authorizes the governor to fill a vacancy

in any office at any time if no other mode is provided. This clause gives the governor a greater vacancy appointive power than the Illinois clause, for the latter limits the governor to appoint only during a recess of the senate and to an office which is not elective, but of course it does not say "if no other mode is provided" but it undoubtedly means that. The Nevada clause has been copied or imitated by about a dozen states.

The Illinois constitution (Sec. 20, Art. V) also names the important state offices and authorizes the governor to fill vacancies in them. About a dozen states have a similar constitutional provision, several constitutions name a few of the state offices and commissions in which the governor can fill vacancies. A few constitutions provide that the governor can make an appointment "if a vacancy occurs in any state office".

With respect to vacancies in the courts, the Illinois constitution (Sec. 32, Art. VI) says that, among other things, the governor can make an appointment only when the unexpired term does not exceed one year. Only a very few other states limit the governor to this extent. The great majority of the state constitutions authorize the governor to make an appointment if a vacancy occurs in the courts, at least the superior courts, for the unexpired term or until the next annual or general election.

The Illinois constitution (Sec. 12, Art. V) authorizes the governor to remove any officer he may appoint for incompetency, etc. Only about a half dozen other states give him such an extensive removal power. The Michigan State constitution authorizes him to remove for gross neglect of duty, etc., any appointive

or elective state officer, except judges and legislators, but he has this power only during the recess of the legislature, and he must report his causes of removal to the next meeting of the legislature. So it can not be said that the governor's power of removal under the Michigan constitution is any greater than under the Illinois constitution.

Nothing has been said thus far as to the governor's appointees being confirmed by the senate, but practically all constitutions provide that this must be done, unless they are vacancy appointments and often these must later be confirmed. In some of the older states like Massachusetts, New Hampshire, and Maine there is a council that advises the governor and confirms his appointments, but it appears that in New Hampshire the powers of the governor and the council are coextensive, that is, either one can make a nomination and the other confirm it.

This survey shows that the governor's appointive power under the constitutions of the various states is rather limited, nor is there any evidence in the constitutions recently adopted that there is a tendency to increase the governor's power in that direction. Some of the constitutions adopted the latter part of the eighteenth century gave the governor a more extensive appointive power than any added during the last or even the present century. Among these are the constitutions of New Hampshire of 1792, and of Massachusetts of 1780. The latter with some amendments is still in force, but the former was so fully amended in 1902 that the present constitution of that state may be said

to run from that date. In both states the governor's appointive power is more limited today than a century ago. In Vermont the constitution of 1793 is still in force but under that constitution the governor's appointive power is rather limited. The Maine constitution of 1820, and the New Jersey constitution of 1844, are still in force and under both the governor's appointive power is rather extensive compared to many other constitutions.

Beginning with the early part of the last century there was a tendency to decrease the governor's appointive power and this grew until about 1850 when a reaction set in.¹ The democratic spirit to make all officers elective received a great impetus about 1830 when a wave of Jacksonian democracy swept over the country, but when this had subsided, people began to have more faith in the governor's appointments.²

So far there are only about a half dozen states that give the governor a removal power coextensive with his appointive power, nor is there evidence in recent constitutions to increase that power. Of the eight constitutions adopted since the opening of the present century only one - New Mexico - gives the governor a removal power coextensive with his appointive power. The clause in the Michigan constitution of 1909, which authorizes the governor to remove any officers for cause, is an imitation of an amendment of 1862, to the constitution of 1850, and thus was probably the first state constitution to give the governor an extensive removal power.

By the constitution giving the governor a removal power

¹The State Governor, by J. A. Fairlie, pp. 15-19.

²Iowa Applied History Series, No. 6, p. 15.

coextensive with his appointive power means more than is at first apparent for it authorizes him not only to remove all of his appointments under the constitution but under the statutes as well, whether an office has been created in the past or will be created in the future.

Even though the governor's appointive power under the various constitutions is very limited, and his removal power even more so, except in a few states. This is by no means the total extent of his powers in that line, for it has been greatly extended by law to offices created by statutes¹.

Now as to the nature of the appointive and removal powers, Madison said they are executive and so belong to the president unless the constitution provides otherwise, and congress in 1789 conferred upon the president the sole power to remove his appointees in the execution department. This was the settled doctrine until the tenure of office act of 1867 which provided that the president must have the concurrence of the senate to remove any of his appointees; but this act caused so much friction that it was modified in 1873, and repeated in 1887, and so the old doctrine was reestablished.²

The great majority of the state courts, however, do not agree with the federal view as to the nature of this power. They say it is not inherently executive and that the governor has only such appointive and removal powers as the constitution gives him. Some courts say that the removal power is executive, others that

¹Am. Pol. Sci. Rev. VIII, pp. 621-629.

²Atlantic Monthly, V. 85, pp. 721-32

ibid. V. 86, pp. 1-14

Mich. Law Review, pp. 195-205

it is judicial, and again others that it is quasijudicial. Courts take different views on this matter and, of course, much depends upon for what causes, and by what methods an officer can be removed. Nor do the courts agree as to what is an executive or a judicial function.¹ But it appears that it is now pretty generally held that if the governor may remove an officer in a summary manner whether by giving notice of charges or without notice, it is an executive action, and it is said to be judicial in its nature when he must prefer charges, give notice and a hearing, and pass judgment accordingly.

But whatever its nature may be the courts are becoming more liberal in construing removal provisions both constitutional and statutory, and so extending the governor's removal power by judicial interpretation. This is especially true in authorizing the governor to make summary dismissal under removal provisions which in their nature appear to authorize removals only by a judicial process.

In concluding this chapter it must be remembered that it deals with the appointive and removal power of the governor only under the constitutions of the different states, and when a constitution creates an office, designates the mode of appointment, fixes the tenure and prescribes the method and cause of removal, that is exclusive and not subject to legislative control, and the only way to make changes in the constitution is by amendments or

¹Michigan Law Review, V. 3, pp. 290-301
ibid., V. 3, pp. 341-351

by the adoption of a new one, and this is generally so difficult that it is a slow and cumbersome process. For this reason a constitution or a part of it may often, for a long time, be an obstacle to promote progress, reform and efficiency in a state government.

are
All state constitutions, of needless length and the longer they are the greater an obstacle they may be. It seems they are made so long to protect the people in their rights and to guard against arbitrary legislation; but as the recall is coming into vogue, that weapon would be ample to protect the people against unjust governmental action. A constitution of a few pages giving the fundamentals of a state government would be ample, and the creation of department heads under the executive, the creation of inferior courts, and other organs of the government which are constitutional in their nature, could be provided by what the French call organic laws passed by the ordinary legislative body and so could be easily changed. The minor affairs of government could be dealt with by ordinary legislation.

To adopt or change a constitution, or a constitutional law as the French call it, ought to require a two-thirds vote of all the legislators, the approval of the governor, and a concurrence of a majority of the people. An organic law ought to be enactable by the same process, but not require the approval of the people; while the enactment of an ordinary law ought to be by the usual method.

The following is a list of the latest constitutions but nearly all of them have been more or less amended since their adoption:

Alabama	1901	Nebraska	1875
Arizona	1910	Nevada	1864
Arkansas	1874	New Hampshire	1902
California	1879	New Jersey	1844
Colorado	1876	New Mexico	1910
Connecticut	1818	New York	1894
Delaware	1897	North Carolina	1876
Florida	1885	North Dakota	1889
Georgia	1877	Ohio	1912
Idaho	1889	Oklahoma	1907
Illinois	1870	Oregon	1857
Indiana	1851	Pennsylvania	1873
Iowa	1857	Rhode Island	1842
Kansas	1859	South Carolina	1895
Kentucky	1891	South Dakota	1889
Louisiana	1898	Tennessee	1870
Maine	1820	Texas	1876
Maryland	1867	Utah	1895
Massachusetts	1780	Vermont	1793
Michigan	1909	Virginia	1902
Minnesota	1857	Washington	1889
Mississippi	1890	West Virginia	1872
Missouri	1875	Wisconsin	1848
Montana	1889	Wyoming	1889

CHAPTER II

THE APPOINTIVE AND REMOVAL POWER OF THE GOVERNOR DURING THE OPERATION OF THE FIRST CONSTITUTION

1818-1848

The provisions of the constitution of 1818 that deal with the governor's appointive power are the following sections, all under Article III: "Section 8. When any officer the right of whose appointment is by this constitution, vested in the general assembly, or in the governor and senate, shall, during the recess die, or his office by any means become vacant, the governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the general assembly.

"Section 20. The governor shall nominate, and by and with the advice and consent of the senate appoint a secretary of state, who shall keep a fair register of the official acts of the governor, and, when required, shall lay the same, and all papers, minutes, and vouchers, relating thereto, before either branch of the general assembly and shall perform such other duties as shall be assigned him by law.

"Section 21. The State treasurer and public printer or printers for the state shall be appointed biennially by the joint vote of both branches of the general assembly: Provided that during the recess of the same the governor shall have power to fill such vacancies as may happen in either of said offices.

"Section 22. The governor shall nominate, and by and

with the advice and consent of the senate appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: Provided, however, that inspectors, collectors and their deputies, surveyors of the highways, constables, jailers, and such inferior officers whose jurisdiction may be confined within the limits of the county, shall be appointed in such manner as the general assembly shall prescribe."

According to the Journal of the Constitutional Convention of 1818, the above clauses were adopted by the convention as introduced and without debate¹.

The original draft of the constitution also contained the following section affecting the governor's appointive power. Section 8, Article IV. "The governor shall nominate, and by and with the advice and consent of the senate, appoint e competent number of justices of the peace in each county²." But the clause below was substituted for it: Section 8, Article IV. "A competent number of justices of the peace shall be appointed in each county in such manner, at such times and such places as the general assembly may direct, whose time of service, power and duty, shall be regulated and defined by law, and justices of the peace when appointed, shall be commissioned by the governor³".

"Ford states an interesting fact as to one of the articles

¹Journal of the Illinois State Historical Society, pp. 355-424

²Journal of the Illinois State Historical Society, Vol.6, p. 379

³Ibid., p. 410, 421

of the schedule, to the effect that it was expected that Shadrock Bond would be governor and the convention wished Elijah C. Berry as auditor of public accounts, but thought that governor Bond might not appoint him and so provided for the appointment of the auditor, among other officials, by the general assembly. He also states that a special provision was made as to the qualifications of the lieutenant governor, with reference to length of residence in the territory, so that Pierre Menard might be elected to that office¹.

The meaning of Section 8, Article III, above was called in question by the case of People vs. Forquer (1 Ill.104; 1825). The facts in this case are briefly as follows: Edward Coles was governor of the state. He sent a letter to lieutenant governor Hubbard stating that he would be absent from the state for some time, and that the duties of the office of governor would devolve upon him. Acting under this authority, Hubbard on November 2, 1825, appointed W.L.D. Ewing paymaster general, -the office being vacant, - by preparing and subscribing his name to a commission to expire at the end of the next session of the general assembly which commission he requested the secretary of state to countersign and affix the seal of the state, but he refused to do so. Hubbard then obtained a rule from the court requiring the secretary of state to show cause why a mandamus should not be issued against him to countersign and seal the commission. The secretary gave several reasons

¹Journal of the Illinois State Historical Society, Vol. 6, 351
(Jan. 1913)

why a mandamus ought not be issued against him, but only one is of importance for the question under consideration, and it is this: that from the records in the secretary's office it did not appear that the office of paymaster general had ever been filled by any previous appointment.

The court found that the office had been created February 8, 1821, under an act amending an act providing for organizing the militia of the state. The fourth section of said act reads that there shall be an adjutant general, a quartermaster general, and a paymaster general appointed by the commander in chief. The court also found that the office had never been filled, Now the question is can the governor make an appointment during the recess of the assembly when the vacancy did not occur since adjournment.

The court answered this question in the negative for it said that this section of the constitution only authorizes the governor to make an appointment if a vacancy occurs during recess, and that as the office had never been filled no vacancy could occur.

It says that to reason that the contingency had happened in this case would require a perversion of the language used.

The Constitution of the United States has a similar phrase which empowers the President to fill vacancies that may happen during the recess of the senate. The senate has given this phrase the same meaning, that is, that no vacancy could occur during the recess of the senate unless the office had been pre-

viously filled, and the President has observed that construction.

The office of paymaster general was vacant since 1821. There appeared no call or necessity for filling the vacancy. Never before under similar conditions had the governor claimed such authority, even though in one case it loudly called for its exercise.

Hence the court concludes that the lieutenant governor, even admitting he was clothed with the functions of governor, he had no constitutional power to fill the vacancy.

Such in brief is the courts decision of the case, but it appears that the court was erroneous in applying the above clause to the facts of the case, for the statute gave the commander in chief the sole and absolute right to appoint a paymaster general, vacancy or no vacancy. If the clause refers to an office created by the constitution, it can not apply for the office was created by the general assembly. And if the clause refers to the office created by the legislature whose appointment is by the constitution vested in the general assembly it can hardly apply either, even though Section 10 of the schedule says that "an auditor....an attorney general and such other officials for the state as may be necessary may be appointed by the general assembly", for in this case the assembly conferred the appointive power upon the governor. There is no doubt but that the general assembly could make this appointment, even if it had not expressly reserved that right, after creating the office if no other provision had been made, and the governor could then have made an appointment only when a vacancy occurred during recess; and the same conclusion

would apply if the appointment had been vested in the governor and the senate. But the general assembly saw fit to divest itself of this privilege which it apparently had a constitutional right to do, and give to the governor the sole and absolute power to appoint the paymaster general.

It appears that the court in construing the meaning of this clause overlooked the essential words on it. In substance the clause reads: when any officer the right of whose appointment is by this constitution vested in the general assembly or in the governor and the senate shall become vacant the governor shall have power to fill such vacancy. The court in discussing the meaning of this clause says: "It only authorizes the governor to fill a vacancy when it shall occur during recess of the general assembly whether that vacancy be occasioned by death or any other means. The vacancy must happen during recess". So the court in its discussion of the clause left out the words: "The right of whose appointment is by this constitution vested in the general assembly or in the governor and senate", and so apparently overlooked the meaning of the phrase.

In the case at bar the appointment was not vested in the general assembly nor in the governor and the senate, for the right to appoint a paymaster general was conferred absolutely upon the governor. What may have led the court astray in the first place was the fact that the acting governor was granting his appointee a commission which was to expire at the end of the next session of ^{the} general assembly. So apparently the acting governor looked

upon his act as a recess appointment to fill a vacancy, and it appears that the secretary of state took the same view of the case for in his answer he said that by the records in his office it did not appear that the office had ever been filled so that a vacancy could be created. It may be that all parties looked upon Section 8 above as the basis of the governor's authority to appoint a paymaster general, when in fact such authority was conferred upon him absolutely by the general assembly. So it appears that the court's decision is erroneous so far as it applies to the facts of the case; but nevertheless the case stands for one important question and that is it defines what is meant by the word "vacancy".

Under Section 20, quoted above, which gives the governor a right to appoint a secretary of state, etc., arose the case of Field vs. People (3 Ill. 79-1839). It is the most important case dealing with the governor's appointive and removal power. It has always been considered the leading precedent dealing with that function of the governor.

The facts of the case are that A. P. Field was appointed secretary of state in 1829, and continued to hold and discharge the duties of the same. In 1838 Thomas Carlin was elected governor of the state and the next year, after his inauguration he appointed John A. McClernand secretary of state.

The case was appealed to the Supreme Court on an information in the nature of a quo warranto filed by McClernand against Field to know by what authority he holds the office of secretary of state. The question is: Who is entitled to the office? To

settle this question the court must determine whether the governor possesses the constitutional power to remove the secretary of state and appoint another. This authority must be found in the constitution.

The governor has such powers as are delegated to him, or in accordance with that instrument he is entitled to exercise. The constitution is a limitation on the legislative department of the government; to the other departments it is a grant of power. The constitution has no express grant giving the power of removal. It is claimed that it is granted by implication; that from the grants of other powers in the constitution, this one of removing the secretary of state is necessarily implied as a means of rendering those grants available.

The first and second sections of Article I of the constitution say that the government shall be divided into three departments, and that neither of these shall exercise any powers expressly granted to another.

This is a general principle and must be understood in a qualified sense. It does not mean that those departments must be kept entirely separate and distinct so as to have no connection or dependence, but means that the whole power of two or more of these departments shall not be lodged in the same hands. In theory and in practice there is a blending and admixture of the different powers which is essential to an efficient government.

This division as actually made does not show what powers are clearly granted; so when a question arises as to the extent of the powers of one of these divisions, it can not be settled

by those sections which confer no specific powers. As no power is granted so none can be implied. A power by implication can only be claimed as necessary to the exercise of one expressly granted. This part of the constitution is merely a broad theoretical line of demarcation between the three departments of government.

The first section of Article III says that the executive power shall be vested in the governor. It is contended that this clause gives the governor the power to appoint and to remove from office; that these are executive functions; and that they belong ex officio to the governor. But the court holds that they are not necessarily executive functions, at least not under the state government, and that the executive power is just such power as the constitution confers. The practice of the state governments with respect to the power of appointment is so diversified that no general rule can be deduced from it, accordingly it is an executive, legislative, or popular function as the respective constitutions have made it.

The constitution of the United States also says that the executive power shall be vested in the President. But this clause with other sections of the constitution places the President in control of the whole executive department. But under the state constitution the executive power is understood in a much more limited sense, for by its other provisions it is greatly circumscribed. It has created other executive officers in whom a portion of this power is required to be vested.

Between the two constitutions there is a great disparity

between the executive powers of appointment conferred. The President may with the advice and consent of the senate appoint all superior officers of the general government. The governor, with the senate, may appoint a secretary of state and his staff officers. The right to appoint is not given to the governor by a general grant of power as it is to the President. So in the national government there is some propriety for calling it an executive function but that can not be said in a state government.

According to the maxims of the British government the power to appoint and to remove from office are executive functions. The American states have adopted the English common law but not that form of government nor the principles upon which it is founded. There the King is the sovereign power. When a question of prerogative arises recurrence must be had to the charters to see whether the rights has been surrendered to the people. All rights of which he has not divested himself come within his prerogative. But under the American theory of government the sovereign power is in the people and only such power as they have delegated to their functionaries can be exercised. With us the question is whether the power has been granted to the executive and not whether it has been granted to the people.

It is also urged that because the governor shall see that the laws are faithfully executed also gives him control and consequently the power to remove the officers of the executive department. But this claim has neither the sanction of authority nor the practice of other state governments. This phrase confers

no specific authority: it means to watch with vigilance over the public interest. It is ^{the} manifest intention of the constitution not to give the governor control over the secretary of state for that would be incompatible with the performance of his duty. If the governor has no right of direction as to the secretary's duties, he certainly has no right to dismiss him.

It is also contended that because the office of the secretary of state is created without duration, that he holds at the will of the appointive power. Even if that were the case, which it is not, he could not be removed without the joint action of the senate for the appointment was by the governor with the consent of the senate. In accordance with the common law, judicial adjudications, and subsequent legislative action an officer whose office is created by the constitution without limit holds until the law gives him one.

A case in point is *People vs. Mobley* (2 Ill. 214-1835) In that case the court held that a clerk of court under the constitution holds indefinitely until the legislature prescribes his term.

The constitution of the United States fixed the tenure of offices it created, and judges are to hold during good behavior; the inference is that others that may be created hold at pleasure, unless congress provides differently. Under the Illinois constitution the tenure of a large proportion of the offices is unlimited. The constitution of the United States puts the tenure beyond the control of congress, while the state constitution leaves it to

legislature.

It is further urged that as the governor may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices implies the right of removal in the governor. If that were the case the legislature could remove the governor, and with the governor have power to remove all executive officers as it may call on all of them for information. If the officers refuse or neglect to give the information enjoined by law, the governor may enforce a compliance with his call but he must do it in a manner prescribed by law.

Section 20 of Article III which says that the governor shall appoint a secretary of state, also says that the secretary shall register the official acts of the governor. It is argued that this duty together with the one that the governor may call for official information creates an official intercourse of confidence as to imply an authority in the governor to remove the secretary. But the court replies that this assumes the existence of a confidence which does not exist. There is no evidence of intercourse between these officers of a confidential character. It is not to be found in the nature of the duties nor in the information to be given. They relate to public matters, not to private; all idea of privacy or confidence is excluded. The only foundation for the idea of confidence is probably the analogy between the officers in the executive department of our government and those in the executive department of the federal government, but there is no analogy between the legal obligations of the officers of

the respective governments or the relation in which they stand to the respective executives.

The President may require the opinion, views, counsel, and advice of the heads of the departments relative to the legality or policy of measures. He calls on one or more according to the importance of the subject. The consultation may be individual or in cabinet council. It is private and confidential, and so regarded by the law; and none of the officers or their clerks - who are sworn to secrecy - can be required to give testimony of a confidential character. But there is no such confidential intercourse between the governor and the secretary of state. The governor may call for matters connected with their offices - that is, public matter. He has no right to the advice or opinion of the secretary of state as to the legality or propriety of measures. The governor can only require such information as the law requires to be given and so there is no implication of confidence.

Even though the President is the head of the whole executive department, and has a right to require the opinion of the executive officers and see that the laws are faithfully executed, yet he could not control the actions of the secretary of state where the law enjoins a duty upon him. This was decided by the supreme court of the United States in the case of Marbury vs. Madison. If the President could not control the actions of the secretary of state where the law enjoins a duty upon him, it consequently follows that the governor has no such right over the secretary of state of Illinois and so no right to direct him or dismiss him.

It is argued that as the constitution of Illinois is modeled after the constitution of the United States and that the President has power under that instrument of removing officers in the executive department, and that the same power was intended to be given to the governor. But the court says that other state constitutions may as well serve as models for the Illinois constitution as the constitution of the United States; that the government of Illinois bears a closer resemblance to other state governments than to the general government; that their practices seem to afford a better precedent, and to be of more weight, yet only one governor in all the other states possesses the power claimed by the governor of Illinois.

The President's authority is founded on different grounds and his power of removal does not extend to officers whose offices were created by the constitution by law. Congress has given the President the power to remove the officers that he appoints for the executive departments because these officers are his assistants and agents, and he is responsible for their official conduct. But the governor is, neither in fact nor in theory, responsible for the secretary of state nor any other officer. The President's duties are much more multifarious and diversified than the governor's. The governor's duties are domestic while the President's are international, so it is necessary to give him extensive powers so that he can properly perform the duties of his sovereign office. So it is a contrast and not an analogy between the powers and responsibilities of the executives of the two governments and also between the character and accountability of the respective

officers.

The court concludes that the governor has no power under the constitution to remove the secretary of state at pleasure. The constitution gives him no such grant; none can be implied from its provisions. It is not a power necessary to the exercise of any power expressly delegated or to the performance of any duties enjoined upon the executive. Certainly the governor alone can have no title to the exercise of this power as being incidental to that of appointment as he alone did not make the appointment.

So according to the first state constitution the governor had no removal power, and his appointive power was very limited; and if he had been limited to this it would have been a misfortune so far as promoting efficiency in state administration is concerned. But fortunately the general assembly under the constitution had the right to prescribe by whom many other officials may be appointed and removed. So from time to time as the general assembly created new offices to administer the ever increasing activities of the state, it saw fit to increase the governor's appointive power, and in many cases it also gave him the power to remove conditionally and in some cases absolutely.

So far as increasing the governor's appointive and removal powers by creating new offices during this period and authorizing him to appoint and remove the officials, the legislative enactments may be classified under the following heads:

1. Judicial administration
2. Banks and loans
3. Public works
4. Private corporations
5. Charitable and correctional institutions
6. Military
7. Miscellaneous,

During this period the general assembly authorized the governor to appoint, in 1819, notaries public¹, a recorder² in each county, and a circuit attorney³ for each judicial circuit; and in 1825 a public administrator⁴ in each county, that is, a person to whom administration should be granted in case any person should die intestate and leave no kin in the state, also commissioners⁵ in other states to administer oaths, take depositions, and acknowledge instruments. In 1835, however, the office of recorder⁶ became elective, and the general assembly appointed the circuit attorneys⁷. In 1821 the courts of probate were created but the judges of those courts were appointed by the general assembly⁸.

In 1837 the governor was authorized to appoint on part of the state nine directors for the bank of Illinois,⁹ and five

¹1819, 31; 1823, 122; 1829-30, 112; 1837, 116; 1840, 66; 1841, 190; 1843, 10

²1819, 19; 1835, 166

³1819, 204; 1825, 178; 1827, 79; 1835, 44

⁴1825, 70; 1829, 208; 1840, 10

⁵1825, 70; 1829, 20; 1843, 10; 1845, 28

⁶1835, 166

⁷1835, 44

⁸1821, 120; 1823, 132

⁹1839, 233; 1837, 22; 1816, 11

directors for the (second) state bank of Illinois¹ provided the banks should accept the provisions of an act of 1837, increasing the states share of capital stock in those banks. Beginning with 1843 the legislature passed acts providing for the liquidation of the bank of Illinois², the state bank of Illinois³, and the bank of Cairo⁴, authorizing the governor to appoint commissioners to look after their affairs. Before this he had been authorized, if vacancies occurred, to appoint cashiers^{4a} of the (first) state bank of Illinois and its branches, and also commissioners to inspect the affairs of the bank of Edwards⁵ville and the (second) state bank of Illinois⁶.

Under an act of 1831⁷ authorizing the governor to borrow money for the state he could appoint agents in any part of the United States to assist the auditor and the treasurer of the state in issuing and transferring certificates to secure the loan. Later he was given similar powers under two acts; one to provide for a sale of bonds for a canal loan⁸, and the other to refund the state debt⁹.

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- 11839, 233; 1837, 22; 1835
21843, 27; 32; 1845, 248
31843, 21, 25; 1847, 20
41843, 36; 1818, 72
4a1825, 83; 1821, 80
51826, 81; 1818, 65
61835, 11
71830-1, 93
81839, 168
91847, 162

In 1823 the governor was empowered to appoint a commission¹ to consider the advisability of improving the navigation of the Wabash, and six years later he was empowered to appoint a commission² to look after the construction of a canal between Lake Michigan and the Illinois River. In 1833 this commission was abolished but in 1835 it was revived, and two years later the legislature appointed it. In 1843 it was abolished to make room for a board of trustees³, one to be appointed by the governor, and two by the subscribers of the canal loan. The governor should also appoint a commission to appraise the damages sustained by parties who were deprived of their canal contracts⁴.

The legislature of 1823 had appointed a commission⁵ to investigate the feasibility of connecting Lake Michigan and the Illinois river with a canal; four years later it named another commission⁶ to inspect the navigation of the Little Wabash; and in 1837 it named agents to prosecute trespassers upon the canal lands⁷.

Beginning with 1837 the general assembly appointed a board of public works⁸ and also a board of fund commissioners⁹, but by 1843 the latter board was abolished¹⁰. It also named a register and a receiver¹¹ to have charge of a saline reserve sale

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- 1 1823, 72
2 1829, 14; 1831, 39; 1833, 223; 1835, 146; 183, 39
3 1843, 55
4 1843, 60
5 1823, 152
6 1827, 359
7 1837, 48
8 1837, 123; 1838-9, 92; 1839-40, 93
9 1837, 121; 1840, 94
10 1843, 147
11 1829, 144

office, and at different times it appointed commissioners to sell certain lands.¹

The legislature of 1833 passed eight different acts² each in incorporating a manufacturing company and under each act the governor was authorized to appoint three commissioners to investigate annually the affairs of the company and make a report to the governor who should publish the same in some newspaper.

During this period the governor was also authorized by various acts³ incorporating turnpike companies to appoint commissioners to investigate their roads to see if each company had complied with the provisions of the act creating it so that licenses could be granted to set up toll gates. Likewise under different acts⁴ he could name appraisers to value the land used and damages caused to land owners by turnpike and railroad companies in constructing their lines; and by other acts⁵ he could appoint commissioners to find the value of labor and material given by the state to certain railroad companies.

Only a few penal and charitable institutions were organized during this period. In 1827 the legislature appointed a commission⁶ to erect a penitentiary at Anna, and four years later the governor was authorized to appoint a board of inspectors to manage it⁷.

¹1829, 14; 1841, 295

²1833, 43, 47, 52, 63, 70, 95, 100

³1819, 119; 1821, 94; 1836, 126; 1840, 143

⁴1833, 80; 1836, 14, 48, 117

⁵1841, 198; 1843, 196; 1847

⁶1827, 139

⁷1831, p. 104-8

In 1847 "The Trustees of the Illinois state hospital for the insane" was incorporated¹; and in 1839 the school for the deaf and dumb was organized but with this institution the governor had no appointive power until after this period.²

The general assembly of 1819 also passed a law which provided for organizing the militia of the state. Under this act the governor was authorized to appoint an adjutant general, and also two aids de camp to rank as colonels. In 1821 this law was amended, and the fourth section of the amendment reads as follows: "Be it further enacted that there shall be an adjutant general, a quartermaster general, and a paymaster general to be appointed by the commander in chief and to rank respectively as colonels, and the commander in chief is also authorized to appoint two aids de camp with the rank of colonel ". It was by virtue of the authority conferred by this section that acting governor Hubbard appointed Mr. Ewing paymaster general in 1825. This matter has been discussed above in the case of Forquer vs. People.

Among other appointments that the governor was authorized to make during this period are: commissioners to survey the eastern⁵ and northern⁶ boundary of the state; a commission⁷ to

¹1847, 52
²1839, 162
³1819, 273
⁴1821, 106
⁵1821, 97
⁶1829, 11; 1831, 101
⁷1843, 81

adjust matters growing out of the creation of Marquette County out of Adams; two boards to repair the damage caused by fire to the records of Jackson¹ and Franklin² counties; agents to lease lands³, locate seminary lands⁴, to preserve saline lands⁵ and to examine salt springs⁶.

The reason for enumerating the appointments made by the legislature is that in all of those cases the governor had authority to make temporary appointments if vacancies occurred during the recess of the legislature.

With respect to the governor's removal power authorized by the legislature during this period, that will be dealt with in the concluding chapter of this treatise.

¹1843, 20
²1845, 213
³1830-1, 164
⁴1830-1, 164
⁵1833, 550
⁶1841, 295

CHAPTER III

THE APPOINTIVE AND REMOVAL POWER OF THE GOVERNOR DURING THE OPERATION OF THE SECOND CONSTITUTION

1848-1870

The clauses of the constitution of 1848 that deal with the governor's appointive power are as follows:

"Section 12, Article IV. The governor shall nominate and by and with the advice and consent of the senate (a majority of the senators concurring) appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointments are not otherwise provided for; and no such officer shall be appointed or elected by the general assembly.

"Sections 22, Article IV reads: There shall be elected by the qualified electors of this state, at the same time of the election for governor, a secretary of state, whose terms of office shall be the same as that of the governor, who shall keep a fair register of the official acts of the governor, and, when required, shall lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the general assembly, and shall perform such other duties as shall be assigned by law, and shall receive a salary of eight hundred dollars per annum, and no more, except fees: Provided, that if the office of secretary of state should be vacated by death, resignation, or otherwise, it shall be the duty of the governor to appoint another who shall hold his office until another secretary shall be elected and qualified.

"Section 9, Article V, says: All vacancies in the supreme and circuit courts shall be filled by election as aforesaid:

Provided, however, that if the unexpired term does not exceed one year, such vacancy may be filled by executive appointment."

In the constitutional convention of 1848 various resolutions drafts and amendments were submitted relating to the governor's appointive and removal power. One resolution offered provided that the committee on the executive department should inquire into the expediency of taking away from that department all power of appointment.¹

In relation to the secretary of state the first draft submitted to the committee on the executive department provided that every governor should appoint a secretary of state with the consent of the senate and house of representatives, and that he should hold office during the term for which the governor was elected.² This committee, however, in its report to the convention recommended for incorporation into the constitution the identical clause of the constitution of 1818³. The matter was then referred to the committee on organization of departments and offices, connected with the executive department⁴. This committee proposed that the secretary of state should be elected by the people and that he should hold office for the same time as the governor.⁵

When the clause of the constitution of 1818 relating to the secretary of state came up for consideration in the convention it was amended so that the governor had power to remove him if in his judgment the public good required it and appoint another⁶.

¹Journal of the Constitutional Convention, p. 28

²Ibid. p. 34.

³Ibid, p. 64.

⁴Ibid. p. 64

⁵Ibid. p.86.

⁶Ibid. p. 179.

This amended section, however, was not adopted, but the one quoted above, viz: Section 22, Article IV, which provides that he shall be elected by the people for the same term as the governor who should fill a vacancy if one occurred¹.

The committee on the judiciary department submitted to the convention a section of schedules which provided that the supreme court and circuit court judges should be elected by the people for the term of nine and six years respectively, and that if a vacancy occurred in these courts the governor was authorized to fill it, provided the unexpired term did not exceed one year, otherwise he should issue writs for a special election².

When the matter came up for discussion in the convention, amendments were offered providing that the judges of the supreme court should be appointed by the governor with the consent of the senate, for nine years³. Another amendment provided that they should be appointed by the governor for fifteen years with two thirds of the senators concurring⁴. The convention, however, adopted the report of the judiciary committee which provided that the supreme and circuit judges should be elected and that the governor should fill vacancies, provided the unexpired term did not exceed one year as ⁱⁿ Section 9, Article V quoted above.

One section submitted to the convention provided that the governor should appoint a commander in chief of the army and navy of this state and of the militia except when it should be

¹Journal of the Constitutional Convention, p. 327.

²Ibid. p. 159-60; 344-45.

³Ibid. p. 337.

⁴Ibid. p. 340

mustered into the service of the United States¹. It was not adopted.

When the convention created the office of state superintendent, an attempt was made to have him appointed by the governor with the consent of the senate², but the convention finally adopted a clause which provided that he should be elected by the qualified voters of the state.³

What is meant by "officers" in Section 12, Article IV above was decided by the case of Bunn vs. People ex rel Laflin (45 Ill. 397 - 1867). The proceedings in this case were in the nature of a quo warranto instituted in the court below by the defendant in error vs. plaintiffs in error, Bunn, et al, to test the constitutionality of an act, passed in 1867 which named a commission to supervise the construction of a state house which the act provided for, on the ground that the commissioners are officers within the meaning of the above section. If they were officers it would render the act void, for the section says that no officers shall be appointed by the General Assembly. The lower court pronounced a judgment of ouster against the respondents, and the case was brought by writ of error to the supreme court, which was asked to reverse the decision.

The defendant in error does not pretend that the plaintiffs in error are officers whose offices were created by law prior to the passage of this act, but he contends that by the law defining the employment and naming the persons who were to be employed was the appointment of those persons to an office within the meaning of the constitution; that the employment was of a

¹Journal of Constitutional Convention, p. 175.

²Ibid. p. 352.

³Ibid. p. 496-500.

nature to render it continuous; that the position existed apart from the persons who fill it; that is, the position may be filled or vacant; that the law fixed no limit of time or duration; that a bond is required as a guaranty; that it has emoluments connected with it; that it concerns the public; that it is exercised on behalf of the government; and that its powers and duties are defined by law.

The court says that under the previous constitution nearly all important officers were appointed by the general assembly. The result was evil, for it gave rise to injurious combinations. Often the passage or defeat of a law hinged upon the appointment of an official. When the new constitutional convention was called, one of the first objects to be effected was to deprive the general assembly of the power it had as to the appointment of judges, state officers and many other officials whose functions were directly connected with one or more departments which the constitution had established. When the delegates were framing the new constitution and made this change in regard to appointments, they had reference to such officers as were created for administering the three departments of government.

The court established this conclusion by reference to the repeated appointments made by the general assembly to places of public employment, the appointments being made by the law which created the positions. At almost every session since 1849 had similar appointments been made.

The court says that the practice under the constitution may be resorted to as offering strong evidence as to the meaning of any phrase. It says that this practice is resorted to under

a law, and so it is just as legitimate to refer to the practice under the constitution for the same purpose.

Contemporaneous history does not show that any one supposed that the general assembly did not have power to appoint and employ agents to perform duties of a transient and incidental character. No one ever exalted such appointees as officers even where the duties required years for performance.

Neither the governors nor the lawyers in the different legislatures who are sworn to uphold the constitution, have ever questioned the constitutionality of such an act.

The court says that the various contentions put forth by the defendant do not make the position an office within the meaning of the constitution. The court further says that the mere continuance of a position does not make it an office, even if the law prescribes the duties. In this case the duties were not of a character that a general duty continued. No general duty was imposed on the appointees. They had a special duty to perform and when that was done their functions ipso facto ended. Nor were they required to take an oath which would have been necessary if they had to perform a governmental function.

From precedents established, from the practice of the government, and from the continuous construction given by the legislature since the adoption of the constitution to the clause in question, the court concludes that the plaintiffs in error are not regarded as officers and that the clause can only have reference to such officers as had some functions of government committed to their charge, and so the decision of the lower court stands reversed.

On January 7, 1862, a convention met at Springfield under the authority of an act of the general assembly, which provided for calling a convention to amend the constitution of the State of Illinois. This convention framed a new constitution¹. Section 10, Article V of this constitution is ^{an} almost exact copy of Section 12, Article IV, of the constitution of 1848², which says that the governor shall appoint all officers unless the appointments are otherwise provided for. Section 15, Article V, gave the governor power to fill any vacancy in the following state offices: Secretary of state, auditor, treasurer, and attorney general³, and Section 16, Article VI is similar to Section 9, Article V of the constitution of 1848 which provides that if a vacancy occurred in the supreme court or the circuit courts, the governor should make an appointment if the unexpired term did not exceed one year⁴.

Section 2, Article XV, authorized the governor by and with the advice and consent of the senate to appoint the trustees of the benevolent and other state institutions, and if a vacancy occurred during recess he could make a temporary appointment⁵.

The 34th section of the schedule says that by an act passed in 1861 the general assembly named three commissioners to examine into the finances of the City of Chicago and report to the city council, and that the governor could fill any vacancy

¹Journal of the Constitutional Convention of 1862, p. 3.

²Ibid. p. 1084.

³Ibid. p. 1085.

⁴Ibid. p. 1087.

⁵Ibid. p. 1096.

in this commission. The same general assembly by another act also authorized the governor to appoint the first members of the board of police commissioners for the City of Chicago whose terms were to expire in two, four, and six years.

The same section of the schedule authorized the voters of Chicago, at the next general election, to vote upon the proposition whether they were for or against the City of Chicago electing its own officers. If the majority of the voters should decide this matter in the affirmative, then the above acts were by this section declared null and void¹.

The convention of 1862 was called because there was need of constitutional reforms. It was voted for before the war, and controlled largely by democrats from the southern portion of the state who spent much time in discussing the conduct of the state and national governments. The republicans believed that the constitution was intended for advantage to the democrats, and so it was voted down by a large majority except the articles which relate to the immigration of negroes, and suffrage².

Under the constitution of 1848, as under the former one, the governor's appointive power was very limited, and he did not have any power of removal. But the legislature, as in the previous period, created new offices from time to time and in many cases the governor was given the power to fill those offices and in some cases also the power of removal.

New laws passed during this period, extending the governor's appointive and removal power by the creation of new

¹Journal of Constitutional Convention of 1862, p. 1113

²The Government of Illinois, p. 44, E. B. Greene.

offices, may be classified as follows:

1. Charitable and correctional
2. Judicial administration
3. Railroad
4. Public Works
5. Education
6. Military
7. Miscellaneous

During this period the general assembly authorized the governor to appoint a Board of Trustees for each of the following charitable institutions, nearly all of which were created during this period: Illinois Institution for the Education of the Blind¹; School for the Deaf and Dumb²; State Hospital for the Insane³; Southern Hospital for the Insane⁴; Northern Hospital for the Insane⁵; Soldiers' Orphan Home⁶. The size of these boards varied from three to twelve members, but in 1869 they were reduced to three members⁷.

For the purpose of investigating these institutions the legislature in the same year created the board of state commissioners of public charities of five members to be appointed by the Governor⁸.

¹1849, 40; 1851, 100; 1857, 84.

²1849, 93; 1857, 84.

³1851, 100; 1857, 84.

⁴1869, 19.

⁵1869, 25.

⁶1865, 76.

⁷1869, 65.

⁸1869, 63.

For the reform and penal institutions of the state the governor was authorized to appoint a board of managers for the State Reformatory¹; a chaplain², a warden³, and a board of commissioners for the Joliet Penitentiary⁴. When this penitentiary was organized the one at Anna was abandoned.

By acts passed in 1861 and 1867 respectively, the governor was empowered to appoint a temporary board of police commissioners for Chicago⁵ and a permanent one for East St. Louis⁶.

In 1855 the governor was empowered to appoint such agents as he should deem necessary to look after any persons that were decoyed or kidnapped⁷.

During this time, the governor's power to appoint Notaries Public⁸ and commissioners of oaths⁹ in other states was extended. He could also appoint a commissioner¹⁰ of Deeds and Bonds who should keep his office in New York City. He was also authorized to name a judge for each of the following courts: the Common Pleas at Cairo¹¹; the City Court at East St. Louis¹²; and the Recorder's Court¹³ of La Salle and Peru, but in the latter case the appointment was only temporary. Likewise he was author-

¹1867, 38.
²1859, 15.
³1867, 11, 21.
⁴1857 ; 1861, 150; 1867, 21.
⁵1861, 151.
⁶1867, 483.
⁷1855, 186.
⁸1857, 144; 1867, 134.
⁹1851, 142; 1865, 23.
¹⁰1859, 193.
¹¹1855, 155; 1867, 76.
¹²1867
¹³1857, 168; 1859, 90.

ized to appoint temporarily a state's attorney¹ for the tenth judicial circuit, an attorney general², and a prosecuting attorney³ for the court of common pleas at Cairo.

Under an act of 1849 providing for a general system of incorporating railroad companies, it was stipulated that when any such corporation and the postmaster general could not agree on the terms for carrying mail, the governor could appoint a commission to lay down the terms within certain prescribed limits.⁴

Other appointments, principally dealing with railroad corporations, that the governor could make during this period are as follows: five commissions to appraise the damages caused to property owners by railroad companies in constructing their lines⁵; a commission to assess the damages caused by a water company⁶; an agent to sell the state's interest in a railroad company⁷; directors to represent the interests of those towns on railroad corporations that received financial aid from them⁸; a commission to sell some state land to a railroad company⁹; an agent to contest the claims against the state, growing out of public work and loans, presented to a commission appointed by the legislature¹⁰.

¹1853, 130.

²1867, 47.

³1855, 156.

⁴1849, 30.

⁵1853, 6, 30, 111; 1855, 299, 334.

⁶1853, 208.

⁷1859,

⁸1869, 320

⁹1869 Priv 3, 351

¹⁰1852, 153-4.

Under an act passed in 1867 to provide for the improvement of navigation on canals and rivers, the governor was authorized to appoint a canal commission. This commission could also take possession of the Michigan and Illinois canal if the holders of canal bonds should consent to have them refunded¹.

In the same year the governor was authorized to appoint the board of "South Chicago Park Commissioners"², and two years later the board of "West Chicago Park Commissioners"³.

In an act of 1867, providing for a new state house, the legislature named a commission of seven to supervise its construction.⁴ The constitutionality of this act was called in question by the case of Bunn vs. People, discussed above. The contention was that the act was in violation of Section 12, Article IV, which says that no officer shall be appointed by the general assembly, but the court held that these commissioners are not officers. The next legislature, however, amended the above act so as to authorize the governor to appoint three commissioners to erect the state-house⁵.

Several educational institutions were established during this period. The board of education to maintain a normal university⁶ was incorporated in 1857 and thereafter the governor could fill any vacancy in the board. In 1867 the Illinois Industrial⁷ University was created and the governor could appoint one trustee

¹1867, 81; 1869, 60.

²1867 Pri.V 2, 472.

³1869 Pri. VI, 343.

⁴1867, 6.

⁵1869, 55.

⁶1857, 301; 1867, 21.

⁷1867, 123.

from each judicial circuit, and one from each congressional district to govern it. Two years later the Southern Normal University¹ was established and to manage it the governor could appoint five trustees. In 1854 he was authorized to appoint a superintendent of public instruction² until one should be elected.

Besides naming his staff, the governor was authorized, due to the exigencies of the Civil War, to make other appointments of a military character, namely; a commission³ to make contracts for the purchase of war equipment; a board⁴ to audit all accounts for war supplies; surgeons⁵ for the troops, if none had been provided when they were ordered out; six military⁶ agents to be stationed in the rebellious states to best promote the volunteer forces from Illinois; a commission⁷ to aid in the preparation of the soldier's National Cemetery at Gettysburg; agents to collect claims due from the United States to Illinois for war supplies⁸; a chief of the State Arsenal⁹; and a peace commission¹⁰.

Appointments of a miscellaneous character that the governor was authorized to make are: a commissioner to preserve field notes, maps, and other papers appertaining to land titles¹¹; a geologist¹²; an entomologist¹³; a treasurer of Edgar County¹⁴; and

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- ¹1869, 35.
²1854, 14.
³1861, Ex, 11.
⁴1861, Ex, 22.
⁵1861, Ex, 6.
⁶1865, 126.
⁷1865, 91.
⁸1865, 135; 1869, 42.
⁹1865, 92.
¹⁰1861, 278.
¹¹1869, 249.
¹²1851, 154.
¹³1867, 35.
¹⁴1867, 105.

a board of equalization, consisting of a member from each senatorial district¹, but two years after its appointment the board become elective, but the governor could fill vacancies if they occurred during recess. Besides he could also name a commission for each of the following: to revise the statute laws of the state²; to control the wagon bridge over the Illinois River at La Salle³; to construct a soldier's monument;⁴ to examine banks⁵, but this commission was abolished in 1865⁶.

The extension of the Governor's removal power during this period is discussed in the final chapter of this paper.

¹1867, 105.
²1867, 49.
³1867, 184.
⁴1869, 45.
⁵1851, 171.
⁶1865, 10.

CHAPTER IV

THE APPOINTIVE AND REMOVAL POWER OF THE GOVERNOR DURING THE OPERATION OF THE THIRD CONSTITUTION 1870-1914

The provisions of the constitution of 1870 that relate to the governor's appointive and removal power are the following six sections, the first four are in Article V, and the next two are in Article VI.

"Section 10, Article V. The governor shall nominate, and by and with the advice and consent of the senate (a majority of all the senators elected concurring by yeas and nays), appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the general assembly.

"Section 11, Article V. In case of a vacancy, during the recess of the senate, in any office which is not elective, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office; and any person so nominated who is confirmed by the senate (a majority of all the senators elected concurring by yeas and nays), shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at the request of the senate,

or be appointed to the same office during the recess of the general assembly.

"Section 12, Article V. The governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty or malfeasance in office, and he may declare his office vacant and fill the same as is herein provided in other cases of vacancy.

"Section 20, Article V. If the office of auditor of public accounts, treasurer, secretary of state, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. An account shall be kept by the officers of the executive department, and of all moneys received or disbursed by them, severally, from all sources, and for every service performed, and a semiannual report thereof be made to the governor, under oath; and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

"Section 28, Article VI. All justices of the peace of the city of Chicago shall be appointed by the governor, by and with the advice and consent of the senate (but only upon the recommendation of a majority of the judges of the circuit, superior and county courts), and for such districts as are now or shall hereafter be provided by law. They shall hold their offices for four years, and until their successors have been commissioned and qualified, but they may be removed by summary proceeding in the

circuit or superior court, for extortion or other malfeasance. Existing justices of the peace and police magistrates may hold their offices until the expiration of their respective terms.

"Section 32, Article VI. All officers provided for in this article shall hold their offices until their successors shall be qualified, and they shall, respectively, reside in the division, circuit, county or district for which they may be elected or appointed. The terms of office of all such officers, where not otherwise prescribed in this article, shall be four years. All officers, where not otherwise provided for in this article, shall perform such duties and receive such compensation as is or may be provided by law. Vacancies in such elective offices shall be filled by election; but where the unexpired term does not exceed one year the vacancy shall be filled by appointment, as follows: Of judges, by the governor; of clerks of courts, by the court to which the office appertains; or by the judge or judges thereof; and of all such offices, by the board of supervisors, or board of county commissioners, in the county where the vacancy occurs."

When the constitutional convention of 1870 was framing a new constitution, various resolutions, amendments, and provisions were presented directly or indirectly affecting the governor's appointive and removal power.

The first resolution presented provided that there should be seven judges of the supreme court appointed for fourteen year terms by the governor with the consent of the senate, but on a motion it was laid on the table¹.

¹ Journal of the constitutional convention of 1870, p. 19.
Debates of the constitutional convention of 1870, VI, p. 77.

Another resolution offered provided that the judge of the court of common pleas should be appointed by the governor with the consent of the senate for a nine year term. It was referred to the judiciary committee¹.

A section was offered providing that the legislature should submit the matter to the people whether the judges of the supreme and circuit courts should be appointed by the governor. After some debate the convention decided not to adopt this proposition by a vote of about four to one².

An amendment to the Article on county officers provided that all such officers may be removed by the governor upon written charges made and after an opportunity to be heard. This was referred to the committee on counties³.

The next resolution presented called for a board of prison managers to consist of five persons to be appointed by the governor with the consent of the senate for terms of ten years after their first term. The governor could also remove them for cause after a hearing. This resolution was referred to the committee on penitentiary and reformatory institutions⁴.

The work "officers" in Section 12, Article V, above has been the subject of much difficulty. The meaning was discussed at considerable length in the state house commissioners case, namely; *Bunn vs. People*, (45 Ill. 397) reported in the previous chapter. In this case it was held that certain appoint-

¹Journal of the Constitutional Convention of 1870, p. 50

²Debates of the Constitutional Convention of 1870, Vol. II, p. 1495.

³Journal of the Constitutional Convention of 1870, p. 175.

Debate of the Constitutional Convention of 1870, p. 320.

⁴Journal of the Constitutional Convention of 1870, p. 320.

Debate of the Constitutional Convention of 1870, V. I, p. 320.

ments and employments are not included in the term "offices", and so it was contended in the convention that they are not subject to the limitations of the above clause which is similar to the one discussed in that case. So it was proposed to amend Section 12 so that beginning with the word "appoint" it should read "appoint all officers and persons whose offices, positions or employments are established by this constitution or which may be created by law, etc., nor shall the general assembly appoint or elect any person of public trust or employment. But among other things it was contended that the Section should be preserved as originally drawn so as not to interfere with the legislature appointing its own officers¹. After some discussion the amendment was withdrawn, but in place of it and to remove the doubt as to what is meant by the word "office" it was decided to add another provision and so Section 24, Article V² was added which defines the word "office" so as to clear up the meaning of Section 12 and also conform to the meaning given the word by the case of Bunn vs. People. The section reads as follows:

"Section 24, Article V. An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed. An employment is an agency for a temporary purpose, which ceases when that purpose is accomplished."

In 1905 the legislature passed an act to provide for the suppression of mob violence.

¹Debates of the constitutional convention of 1870, VI, p. 780.

²Debates of the constitutional convention of 1870 VII, p. 1374

The 6th Section of the Act says that if any such person shall be taken from the custody of a sheriff and shall be lynched it shall be prima facie evidence of failure on the part of the sheriff to do his duty, and when this fact appears to the governor he shall issue a proclamation declaring the office of sheriff vacant, and the coroner shall take charge of the office until the vacancy is filled as the law provides; but this section provides further that such former sheriff may within ten days after such lynching file with the governor his petition for reinstatement to the office of sheriff, and if the governor upon hearing his case shall find that he did all in his power to protect such persons the governor may reinstate him.

Under this statute arose the case of the People ex rel Davis vs. Nellis (249 Ill. 12, 1911). This case also called for a construction of Section 12 above, and also Section 13 and 22, Article IV, not given in this chapter for they do not deal with the governor's appointive or removal power, but it was contended that under either of those sections the above statute is unconstitutional.

In this case the state's attorney of Alexander county on behalf of Davis filed an information in the nature of a quo warranto against Nellis, acting as sheriff of said county, asking that he be ousted from the office. The case involves the legality of the removal of Davis and the appointment of Nellis.

On November 11, 1909, the relator, Davis, was taking William James, a prisoner accused of murder, to some other place

for safe keeping hoping thereby to avoid a mob which was threatened, and while so removing the prisoner a mob overpowered the sheriff, took the prisoner back to Cairo, Alexander county, and killed him. While there the mob also took one Henry Salzner, charged with murdering his wife, and shot him.

On November 18, 1909, the governor issued a proclamation pursuant to the above statute, declaring the office of sheriff vacant and directing the coroner to take charge of the office. On the same day Davis filed with the governor a petition, as the statute provided for, praying that he be reinstated in said office, and on December 1, the governor gave the relator with his counsel and witnesses a hearing.

On December 6, 1909, the governor decided that the relator, Davis, had not done all in his power to protect the lives of James and Slazner and denied his petition for reinstatement, and on December 14, the governor notified the county board that the office of sheriff was vacant and on December 23 the board appointed Nellis as sheriff. The lower court held that Nellis was holding the office of sheriff unlawfully, and so the case was appealed to the supreme court. A cross error was also assigned challenging the constitutionality of the statute under which Davis was removed.

Several questions were presented for the court's decision but only one is pertinent to the subject matter under discussion. It was contended that the act is unconstitutional for it authorizes the governor to remove an elective officer and so it violates Section 12 above which limits his power of removal to such offi-

cers as he may appoint. The court says that this Section applies only to such officers as the governor appoints and not to an elective officer such as a sheriff, and that the section does not prevent the general assembly from passing special legislation to provide for the removal of the sheriff or any other elective officer. The court further says that as the constitution is ordinarily held to be a limitation of power on the legislature and that there is nothing in the constitution to limit its power to provide for the removal of a county officer.

A case in point is that of Donahue vs. County of Will, (100 Ill. 94; 1881). In that case court held that the general assembly had a constitutional right by statute to confer upon county boards the power of removing a county treasurer for derelict of duty, and that by reason of such power it could prescribe the offence which would forfeit the office and what tribunal should determine the guilt.

The constitutional convention knew that the general assembly had all legislative power unless limited, and that if that body intended that a person not a state officer or holding office under the judicial department should not be removed except by judgment of a court, they would have so provided. They knew that a proceeding by quo warranto with the right of appeal would be useless for the term of office may expire before a decision is reached.

Under an act of February 27, 1869, incorporating and authorizing the governor to appoint the west Chicago Park commissioners arose the case of Wilcox vs. the People ex rel Clark Lipe et al, (90 Ill. 186; 1878) calling for a construction

of Section 10, 11, and 12, Article V, given above. The facts of the case were that on October 10, 1877, the governor removed the relators as park commissioners for incompetency, and the next day appointed the defendants as their successors. The questions for the court to decide are: 1st do that west Chicago Park commissioners come within the foregoing constitutional provisions so as to be removable by the governor; 2nd, if so, can they be removed without charges, without notice and without an opportunity of defense.

The relators contended that under section 10, which says that the "governor shall appoint by and with the advice and consent of the senate all officers whose offices are created by the constitution or by law, and whose appointments are not otherwise provided for", there may be two modes of appointment, one by the governor and the senate, and the other by the governor alone under the phrase "whose appointment of election is not otherwise provided for", that is, that the legislature may create offices where the appointment is in the governor alone as in the case of the park commissioners; and that this section means that the governor shall appoint in a particular manner, namely, with the consent of the senate all officers whose offices are created by the constitution or by law, except where the governor is authorized to appoint alone.

Section 11 says that the governor shall make a temporary appointment if a vacancy occurs during the recess of the senate 'in any office which is not elective.' It is contended that the

latter words taken literally would include every office filled by appointment which can not be its meaning but the intention was to include only those appointed by the governor with the consent of the senate as contemplated in Section 10.

Section 12 says that the governor shall have power to remove for incompetency, etc., "any officer whom he may appoint" and declare the office vacant and "fill the same as is herein provided in other cases of vacancy". It is contended that the phrase "any officer whom he may appoint", also is not to be taken literally, but means those whom he appoints with the senate, and that the final clause is further evidence of this for it says "and fill the same as is herein provided in other cases of vacancy", that is, fill vacancies in offices where the appointment is made with the consent of the senate, and that this clause refers to section 11, and the first class of officers contemplated in section 10.

So according to this interpretation the three sections refer to officers appointed by the governor with the consent of the senate and that they require this construction to make them work in harmony with one another. This view would absolutely exclude the Park Commissioners from their operation for they were appointed by the governor without the concurrence of the senate.

The court agrees with the relator that under section 10 there may be two modes of appointment but ^{it} says an ellipsis is necessary to give a true meaning to Section 12. The relator contended the ellipsis should be in the first clause of the section so it would read: "The governor shall have power to remove

any officer whom he may appoint by the advice and consent of the senate for incompetency, etc." While the plaintiff in error contended the ellipsis should be in the second clause of the section so it would read: "He may declare his office vacant, and if the officer removed was appointed by the advice and consent of the senate, fill the same as herein provided in other cases of vacancies".

The court agreed to the construction put upon it by the plaintiff in error for it says any other construction would make provision for the filling of vacancies in one case, namely, where the appointment was made with the consent of the senate, and not in the other, where the governor appoints alone. It would not be coextensive with the power of removal as the constitution intended, and furthermore the section would have failed to make provision for the filling of vacancies caused by the removal of an officer whom the governor alone might appoint and leave the vacancy to be filled by the original appointing power.

The relator also contended that there is not express provision authorizing the governor to fill a vacancy when he alone appoints officers; but the court said it saw no necessity for such express provision in that case, but that in the other class of officers namely, where the governor appoints with the consent of the senate some provision was necessary for filling vacancies where removals are made during the recess of the senate and so the provision was made namely, "and fill the same as is herein provided in other cases of vacancy", that is, filling vacancies where the appointment is made with the consent of the senate.

The court says that the principal part of Section 12 is the first clause giving the governor power to remove and that the second part is incidental and subordinate to the first and must be governed by it. There is more reason to give the governor a right to remove an officer whom he alone appoints than one concurred in by the senate. The court thinks that the framers intended to adopt the rule of the federal government that the power of removal is incidental to that of appointment which was denied in the case of Field vs. People, and that the power to remove applies to appointments made by the governor alone or by the governor by and with the advice and consent of the senate.

The relators further contended that these commissioners are not officers in the proper sense but mere trustees, created a corporation for holding property and caring for it; that in the case of Bunn vs. People the court said that by the term officers, occurring in the corresponding sections of the constitution of 1848, the framers of the constitution had reference only to such persons as administered the three departments of government. The court says that these commissioners perform some portion of the functions of government for they can levy special assessments, pass ordinances, appoint police officers, etc., and so the court concludes that, whether tested by the case of Bunn vs. People or the constitutional definition given above (Sec. 24, Art. V), these commissioners are officers.

That they are mere municipal officers can not be maintained for it was held in the case of Chicago vs. Wright (69 Ill. 318; 187) that the heads of the police officers of

Chicago are not mere municipal officers but that they are also state officers in the sense that they are officers whose duty also concerns the state as in the administration of justice and preserving of peace.

The relators also contended that the constitution like a statute acts perspectively only unless by its terms it clearly implies that it should have a retrospective effect. The court says that in this case the constitution did not act retroactively, even though the offices had been created before the adoption of the constitution; the present commissioners were appointed after its adoption and they knew of the removal clause in it. And furthermore, the court had previously decided that the constitution did not act perspectively only, and it also held that special statutes might be abrogated or modified by the general provisions of the constitution "being held to operate in prae senti with respect to such statutes". The constitution says that those in office at its adoption should remain to the end of their terms and no other limitation was intended.

Now the final question is: Was the power of removal validly exercised? The relators contended that the power of removal is judicial in its nature and so should be exercised according to judicial methods upon specific charges, notice, and hearing. The court says that as the constitution is silent as to the method of procedure it rests with the governor to adopt a method of inquiry to ascertain the courses of removal and it does not rest with the courts to dictate to him how he shall proceed. No written charge, no notice, and no formal trial is necessary.

His action is not subject to revision.

In the case of the People vs. Higginson (15 Ill. 110; 1853) the trustees of the Illinois hospital for the insane removed the superintendent by resolution alleging as a cause that "he did not possess the kind of qualifications which are necessary to the discharge of the duties of said office", and the court said no formal notice, specific charges or trial was necessary. In another case the court held that where the law has vested a quasi judicial power even in a subordinate administrative officer, the court will only inquire whether the officer acted within his power. Where the right to remove an officer has been vested in a particular person or body for cause or upon notice to the incumbent and no right of appeal or review has been expressly given by law the court has no authority to inquire into the discretion exercised by such person or to review such removal.

Under Section 28, Article VI, above and Section 1, Laws of 1871, and as amended in 1891, arose the case of the People ex rel McDougal vs. O'Toole (164 Ill, 344; 1887). The proceeding was by an information in the nature of a quo warranto on behalf of McDougal, the relator, vs. O'Toole, the appellee, charging him with usurping the office of justice of the peace in the town of Lake in Chicago. The circuit court of Cook County and the appellate court decided against the relator and so the case was appealed to the supreme court.

O'Toole was a justice of the peace for the town of Lake and by the constitution and the statute entitled to hold office until his successor was appointed and qualified. The ground

of the information was that Rhoads was appointed and qualified for the position.

The above section of the constitution says that the governor with the consent of the senate on recommendation of a majority of the judges of the circuit, superior, and county courts, shall appoint justices of the peace in the city of Chicago and who shall hold their offices for four years. In pursuance of this section of the constitution, the legislature by law in 1871, and as amended in 1891 provided that the majority of such judges should make such recommendations on June 1, 1895, and every four years thereafter to the governor, and in case he rejected any he must notify the judges, who in ten days should recommend some other person.

In April 1895, the judges recommended five names to be appointed as justices by the governor, and among them was Rhoades to succeed Hotaling, and O'Toole and Moore to succeed themselves. Two months later the governor, with the senate's confirmation, nominated Rhoades to succeed O'Toole and returned the names of Moore and the defendant O'Toole.

It is contended on behalf of the relator that the governor could appoint a recommended person to any of the places; but the court says that since there are five different positions there must be "a line of succession in the descent of each of these offices". Though they are all of the same grade, yet each justice court is distinct and separate from the rest. Each issues its own writs and processes. There is no community of title and they do not act interchangeably as if they were one court.

a commission or a board.

It is also contended that Section 10, Article V, which says that the governor with the consent of the senate shall appoint all officers whose appointments is not otherwise provided for, also give the governor a right to make these appointments; but the court says this section has nothing to do with the facts of this case for there another method has been specifically provided.

It is also argued that the executive is supreme and independant within his prescribed powers and not subject to interference by other departments of the government. The court says that is true but his power here is not independent for he must follow the conditions laid down in the constitution and the statute. The judges recommend: the governor nominates, and the senate confirms. The concurrence of the three agencies is necessary. The defendant was recommended to succeed himself and the governor could not nominate some other person.

Under Section 32, Article VI, arose the case of People ex rel Stringer vs. Kingbury (100 Ill. 509; 1881). This case arose over the application of a writ of mandamus to compel county clerk Kingsbury to call a special election for the purpose of electing a county treasurer of Marshall county to fill a vacancy caused by the death of one Thompson who began his term of office on the first Monday in December, 1879, and died February 27, 1881. The clerk had refused to call such election contending yhat the unexpired term is less than a year. If that were the case the board of supervisors were to appoint one which they did in March 2, 1881.

The relator insists the appointment is a nullity, for the office, by the constitution and by law, was extended one year, namely, to the first Monday in December, 1882, and so the term is to end in 1882 and not in 1881 as it did before the amendment, and the court agreed to this.

This case does not involve an appointment made by the governor, but under the same section the governor can fill court vacancies and any appointive act of his would be regulated by the same construction.

Under the constitution of 1870 as under the former ones the General assembly created many new offices, but the number of new offices created during the period is much more numerous than during the whole previous history of the state due to the states' activities to increase the welfare of the people. And as usual the general assembly conferred upon the governor the power to appoint, and remove many of these officials and consequently the governor's power to appoint and remove correspondingly increased.

The legislation during this period so far as it bears on the governors appointive and removal power may be put into the following divisions:

1. Charitable and correctional laws relating to asylums for the insane, feeble minded, institutes for afflicted children, homes for the soldiers and their wives and children, schools for the blind and deaf, training schools for delinquent boys and girls, a reformatory, penitentiaries, pardons, criminal legislation, etc.
2. Public works, - legislation dealing with highways, canals, rivers, drainage, fish and game, voting machines, forest preserving, land sale commissions,

printing, architects, art, buildings, parks, monuments.

3. Education,- laws relating to normal schools, state university, common schools, historical library, and commissions to represent the state at expositions of industries, education, and art, and civil service, commissions on uniform legislation.
4. Trade and commerce,- legislation dealing with railroads, grain inspection, bank and insurance supervision, fire, public utilities, pawn and loan societies.
5. Health,- laws relating to state board of health, disease, food, examiners of dentists, pharmacists, nurses, barbers.
6. Labor and mining,- legislation dealing with labor commissions, employment agencies, mining boards, factory inspection, mine inspections, arbitration, industrial insurance.
7. Judicial administration,- ^{laws} relating to public guardians, notaries, judges, commissioners of oaths in other states.
8. Agriculture,- legislation relating to live stock commissions, humane agents, veterinarians, apiaries, entomology, geology.
9. Finance,- laws dealing with taxation, revenue laws, equalization.
10. Military.

This classification is by no means intended to be accurate. It is not desirable to make more than ten divisions, and so some of the subjects do not appear to belong under any of them, and so they have been placed arbitrarily under some heading where they may appear not too far out of place.

Among the laws relating to charitable institutions it is found that during this period the governor was authorized to appoint a board of trustees for each of the following institu-

tions: School for the Deaf¹; School for the Blind²; industrial home for the blind³; charitable eye and ear infirmary⁴; soldiers' and sailors' home⁶; soldiers' orphans home⁵; soldiers' widows' home⁷; St. Charles school for boys⁸; a training school for girls⁹; an asylum for feeble minded children¹⁰; a surgical institute for affected children¹¹; the northern¹², eastern¹³, central¹⁴, southern¹⁵, western¹⁶, general¹⁷, hospitals for the insane, and an asylum for the insane criminals¹⁸.

As noted some of these institutions were established in the two former periods, a few under the first constitution but more under the second. The size of the governing boards often varied, but by an act of 1869 it was provided that each board should consist of but three numbers¹⁹, and in 1875 a similar law was passed²⁰.

By an act of 1909 the legislature abolished all these boards, and to take charge of these institutions created a board of administration of five persons to be appointed by the governor.²¹ The same act also authorized the governor to appoint a charities commission of five persons to investigate the institution in charge of the board of administration²². By the same act the

11849, 93; 1857, 84 (Jacksonville)	171895, 9; 1907, 59
21849, 40; 1851, 100; 1857, 84 (Jacksonville)	(Peoria)
31887, 26; (Chicago)	181889 (Chester)
41871, 138; 1865, Pri.VI, 68 (Chicago)	191869, 65
51865, 57 (Normal)	201875, 106
61885, 17 (Quincy)	211909, 104
71895, 23 (Wilmington)	221909, 109
81901, 68 (St. Charles)	
91893, 24; 1895, 295 (Geneva)	
101865; 1871, 417; 1875, 11 (Lincoln)	
111911, 129; 1909, 479 (Alton)	
121869, 25 (Elgin)	
131877, 21 (Kankakee)	
141847, 52 (Jacksonville)	
151869, 19; 1873, 103 (Anna)	
161895, 19 (Watertown)	

governor could also appoint a board of visitors of three members for each institution¹.

Among the temporary appointments that the governor was authorized to make are commissions: one each for the construction of four insane asylums², a penitentiary³, and a school for the feeble minded⁴; others to investigate the feasibility of establishing a surgical institute⁵; to attend the international penitentiary congress⁶; to investigate systems of convict labor in other states⁷; to consider and recommend legislation concerning offences committed on Lake Michigan⁸; to forward relief funds to Sweden⁹, and another to Italy¹⁰.

For the management of the correctional institutions the governor was authorized to appoint a board of trustees for the state reformatory at Pontiac¹¹, and a commission for each of the two state penitentiaries, one at Joliet¹², and the other at Chester¹³. He can also appoint a state board of pardons¹⁴ and a penitentiary commission^{14a}.

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- ¹1909, 110
²1871, 274; 1877, 21; 1895, 19; 1907, 45
³1907, 45
⁴1875, 11
⁵1909, 479
⁶1877, 30
⁷1899, 1
⁸1909, 480
⁹1903, 82
¹⁰1909, 74
¹¹1867, 38; 1873, 145; 1891, 52
¹²1871, 597; 1857
¹³1877, 30
¹⁴1897, 272
^{14a}1907, 45

By an act of 1903 relating to public works a commission was created for the purpose of investigating the problem of road building¹, and two years later a permanent highway commission was created to carry on experimental work in that line². In 1913 a state highway department was created composed of the highway commission, an engineer and assistant engineer³. Under each act the governor was authorized to appoint the officials.

In 1911 the governor was empowered to appoint a rivers and lakes commission to have general supervision of the waters of the state⁴, and the next year he was empowered to fill any vacancy in the office of trustee in certain sanitary districts⁵. He could also appoint the Illinois and Michigan canal commission⁶, but this was authorized in 1867. Among temporary commissions he was empowered to appoint: one to inspect the sanitary district along the Chicago River⁷, another to inspect the feasibility of dredging the Cache river⁸, and another to consider the feasibility of a deep water way from Chicago to the Gulf of Mexico⁹, and also five of fifteen members of a deep water way commission to investigate the water ways and water power of the state¹⁰.

Beginning with 1879 the governor could appoint a board of fish commissioners¹¹, fish wardens¹², game wardens¹³,

11903, 302	111879, 171
21905, 74	121889, 161; 1903, 204; 1905, 272; 1911, 354
31913, 352	131885, 205
41911, 116	
51912, 88	
61867, 81; 1869, 60	
71889, 136	
81903, 28	
91905, 40	
101908, 103	

and a state game commissioner¹. The legislature of 1913 created a state game and fish conservation commission to be appointed by the governor². This commission superseded all other fish and game officers, and it was authorized to appoint fish and game wardens for the state.

Other appointments that the governor was authorized to make in this division are: a board of examiners of architects³; a state architect⁴; an art commission⁵; a printer expert⁶; a voting machine commission⁷; and two more commissions; one to revise and codify the building laws of the state⁸, and the other to construct a state house⁹. Besides he could also name commissioners: to preserve forest districts¹⁰, to appraise land¹¹, to sell land¹², to appraise lease rights¹³, and to plot and dispose of the Kaskaskia commons¹⁴.

An act of 1871, provided that in all cases where the commissioners of any park were named in the act establishing the same, the governor should therefore make the appointments¹⁵; and an act of 1881 provided that he should appoint all park commissioners thereafter to be appointed¹⁶. In 1909 he was authorized

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- 11899, 228; 1903, 211
 - 21913, 364
 - 31897, 82
 - 41899, 79
 - 51909, 96
 - 61905, 392; 1874
 - 71903, 180
 - 81911, 61
 - 91883, 39
 - 101905, 280
 - 111879, 3
 - 121887, 99
 - 131891, 72; 1899, 84; 1905, 82
 - 141909, 426
 - 151871, 592
 - 161881, 116

to appoint the Illinois park commission¹. He can also appoint the commissions for Lincoln Park², South Chicago Park³ and West Chicago Park⁴.

During this time the governor was also authorized to appoint commissioners to erect monuments: to the soldiers of the Civil War⁵, of the Black Hawk War⁶, and those who died at Andersonville Prison⁷; to mark the position of the Illinois troops at Gettysburg⁸, Kenesaw Mountain⁹, Vicksburg¹⁰, Shiloh¹¹, and at Chickamauga and Chattanooga¹²; to the honor of ex governors Bond¹³, Carlin¹⁴, and Altgeld¹⁵, also to General Lawler¹⁶, and ex Senator Kane¹⁷; George Rogers Clark¹⁸, and one to commemorate the establishment of Ft. Edwards¹⁹.

He could also appoint commissioners: to procure and

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- 11909, 58; 1911, 57
 - 21897, 274
 - 31867, Pri VII, 472
 - 41869, Pri VI, 343
 - 51873, 26
 - 61883, 17
 - 71907, 40
 - 81889, 24
 - 91911, 73
 - 101901, 57; 1903, 48
 - 111897, 13; 1899, 6
 - 121893, 16
 - 131881, 24
 - 141913, 56
 - 151913, 54
 - 161913, 59
 - 171907, 41
 - 181907, 41
 - 191913, 58

place in the National Statutory Hall, statues of Francis E. Willard, and ex Senator Shields¹; and to have inscribed on bronze tablets the names of Illinois troops that fought at Vicksburg², and in the War of 1812³, and to care for the cemeteries at Kaskaskia⁴ and Garrison Hill⁵.

Among educational laws it is found that the governor was authorized to appoint a board of trustees for each of the five state normal schools, namely: the Normal University⁶, Southern⁷, Northern⁸, Eastern⁹, and Western¹⁰. In 1873 the governor was authorized to appoint the board of trustees for the State University,¹¹ but in 1887 this board became elective but he could fill any vacancy for the unexpired term¹². He could also appoint a board of trustees to maintain the state historical library¹³, and also an educational commission to investigate the conditions of the common schools and their relation to other schools¹⁴.

He was also authorized to appoint a civil service commission¹⁵, a temporary commission¹⁶ for promoting uniform legis-

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| 1 | 1893, | 48 |
| 2 | 1909, | 93 |
| 3 | 1913, | 61 |
| 4 | 1891, | 34 |
| 5 | 1901, | 94 |
| 6 | 1857, | 301; 1867, 21 |
| 7 | 1869, | 35; 1871, 274; 1873, 103 |
| 8 | 1895, | 70 |
| 9 | 1895, | 63; 1897, 291 |
| 10 | 1899, | 72 |
| 11 | 1873, | 16; 1861, 123 |
| 12 | 1887, | 306 |
| 13 | 1889, | 200 |
| 14 | 1907, | 24 |
| 15 | 1905, | 113 |
| 16 | 1893, | 186 |

lation in the United States, and, later a similar commission¹ with indefinite term. He can also appoint a United States senator if a vacancy occurs².

During this period the governor was empowered to appoint numerous commissions to represent the state at various exhibitions, expositions, and celebrations, namely: at internationals at Philadelphia³, Atlanta⁴, Omaha⁵, and San Francisco⁶; centennials at Cincinnati⁷, Nashville⁸, Toledo⁹, and the ten centennial at Jamestown¹⁰; the Pan American at Buffalo¹¹, interstate at Charlestown¹², Louisiana Purchase at St. Louis¹³, Lewis and Clard at Oregon¹⁴, industrial at Paris¹⁵, the World's Fair at Chicago¹⁶, the one hundredth anniversary of of Lincoln's birth¹⁷, and the fiftieth anniversary of the emancipation of the negroes¹⁸.

Among the laws relating to trade and commerce is an act of 1871 creating a railroad and warehouse commission¹⁹, but this was superseded in 1913 by the public utilities commission²⁰,

1	1907,	570
2	1913,	308
3	1874,	143
4	1895,	26
5	1897,	70
6	1911,	77
7	1887,	317
8	1897,	69
9	1899,	37
10	1905,	21
11	1901,	42
12	1901,	46
13	1901,	42
14	1905,	23
15	1899,	37
16	1891,	68
17	1908,	99
18	1913,	70
19	1871,	618
20	1913,	460

to also be appointed by the Governor. Other appointments that the Governor was authorized to make in this class are: a superintendent of the banking department¹; a fire marshall²; grain inspector³; also assistant and deputies; a director in pawn societies⁴; and also in wage loan corporations⁵.

Laws relating to health authorize the governor to appoint the following boards: a board of health⁶; of dental examiners⁷; of pharmacy⁸; of nurse examiners⁹; of barber examiners¹⁰; Besides he can also appoint a state food commissioner¹¹, and a standard food commission¹²; and at one time he also appointed a commission to investigate the causes and conditions relating to diseases in occupations¹³.

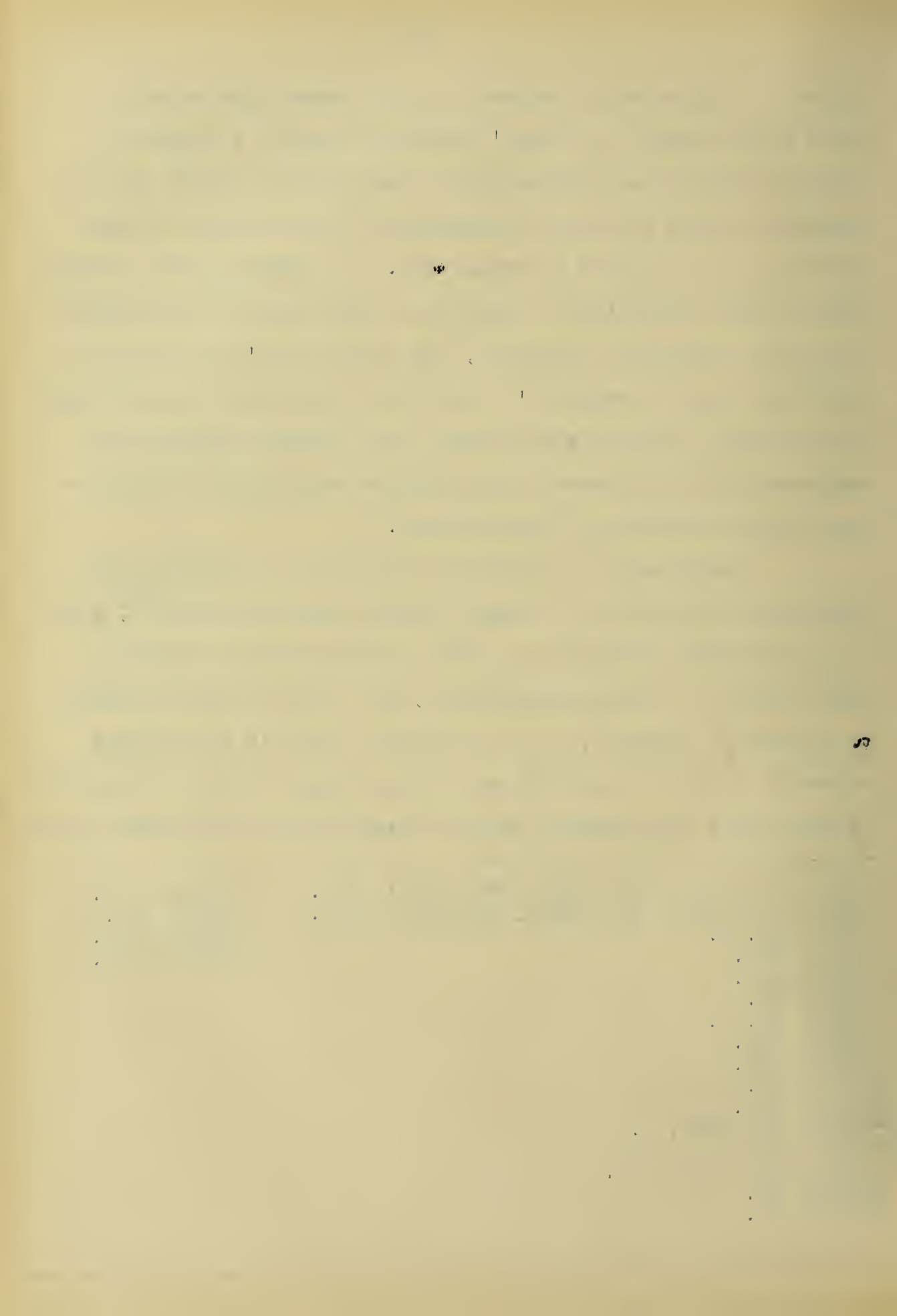
Laws creating offices dealing with labor and mining affairs empower the governor to appoint: a board of labor commissioners¹⁴; a chief inspector of private employment agencies¹⁵; a superintendent, assistant superintendent, and a clerk for each free employment agency¹⁶; a factory inspector, and deputy factory in-

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- ¹1887, 88.
 - ²1909, 266
 - ³1871, 767.
 - ⁴1899, 122.
 - ⁵1913, 201.
 - ⁶1877, 208.
 - ⁷1881, 77.
 - ⁸1881, 120; 1895, 248.
 - ⁹1907, 383.
 - ¹⁰1909, 98.
 - ¹¹1899, 369.
 - ¹²1907, 544.
 - ¹³1907, 586.
 - ¹⁴1879, 61; 1909, 199.
 - ¹⁵1909, 218.
 - ¹⁶1899, 268.

spectors¹; inspectors of mines²; a mine rescue commission³; a state mining board⁴; a miners' examining board⁵; a temporary mining investigating commission⁶; an arbitration board⁷, and an industrial board to provide compensation for injuries or death resulting in the course of employment⁸. In addition the governor had also been authorized to appoint a commission to investigate a plan for industrial insurance, and working men's old age pension⁹; and also an employer's liability commission to investigate the problem of industrial accidents and a method of providing compensation for the same¹⁰; and another commission to investigate into the affairs of unemployment.¹¹

Among laws of a judicial character, the legislature authorized the governor to appoint public administrators^{11a}, public guardians¹²; notaries public¹³; commissioners of oaths in other states¹⁴; claims commission¹⁵; but this was later changed to a court of claims¹⁶; and if vacancies occur in the probate courts¹⁷, court of record¹⁸; and the municipal court of Chicago¹⁹, he could make appointments for the unexpired term provided it does

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| ¹ 1893, 101; 1903, 193; 1907, 310; 1911, 326. | ¹⁶ 1903, 140. |
| ² 1885, 219; 1895, 252; 1905, 325; 1911, 393. | ¹⁷ 1877, 84. |
| ³ 1910, Ex. 3. | ¹⁸ 1901, 137. |
| ⁴ 1907, 388. | ¹⁹ 1907, 231. |
| ⁵ 1911, 439. | |
| ⁶ 1909, 55. | |
| ⁷ 1895, ex. 5. | |
| ⁸ 1913, 346. | |
| ⁹ 1905, 402. | |
| ¹⁰ 1910, Ex. 1 | |
| ¹¹ 1913, 626. | |
| ^{11a} 1871, 89; 1881, 3. | |
| ¹² 1889, 165. | |
| ¹³ 1871, 574; 1875, 88. | |
| ¹⁴ 1865, 23. | |
| ¹⁵ 1889, 89. | |



not exceed one year in length.

In pursuance of Section 28, Article VI of the constitution, the legislature of 1875 by statute prescribed the manner in which the governor should appoint justice of the peace in Chicago on recommendation of the judges of that city¹. The construction of this statute was discussed above in the case of People Vs O Toole².

In the field of agriculture and allied interest, the governor was authorized to appoint a state live stock commission³; a state veterinarian⁴; humane agents for Chicago, East St. Louis⁵ and Peoria⁶; a state inspector of apiaries⁷; an entomologist⁸; a geologist⁹; also a board of horse shoe examiners¹⁰, but the act which created this board was declared unconstitutional.

With respect to finance and revenue officers the governor's appointive power is almost nil. In 1885 he appointed a revenue commission to frame a revenue code for the state¹¹, and in 1909 a special tax commission for an indefinite term to study out a more efficient system of raising the necessary revenue for the state and for local purposes¹². The only really permanent appointive power that the governor has in this field is to fill vacancies on the state board of equalization¹³.

¹1875, 87; 1891, 153; 1895, 86; 1903, 224.

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³1885, 1.

⁴1885, 2.

⁵1877, 6; 1885

⁶1885, 4.

⁷1911, 5.

⁸1857, 35.

⁹1905, 30.

¹⁰1897, 233.

¹¹1885, 266

¹²1909, 59.

¹³1871, 26

Under an act of 1877 to provide for the organization of the state militia, designated as the Illinois National Guard, there should be but one division commanded by a major general, and not more than three brigades each commanded by a brigadier general. Among these military officials that the governor may appoint with rank are the adjutant general, inspector, quarter-master, commissary, paymaster, judge advocate, surgeon, aid de camps and assistants to the main officers¹.

The governor was also authorized to appoint some of the instructors of the Illinois², Northwestern, and St. Albans³ Military Academies as staff officers. An act of 1895 declared that when any college or academy has military training approved by the war department it may be declared a post of the Illinois National Guard and its officials appointed as staff officers by the governor⁴. This act also enabled him to appoint a commission to visit such institutions. He was also authorized to appoint: an examining board to test commissioned officers in military tactics⁵; a board to examine persons for appointment to office in the naval reserve⁶, and finally a commission to construct an armory in Chicago⁷.

This chapter closes the governors appointive and removal power under the third or present state constitution, and legislative enactments thereunder. A summary of this period and a comparison of it with the periods under the former constitutions will be found in the next chapter.

¹1877, 132; 1899, 290; 1903; 322-31

²1889, 371.

³1899, 384.

⁴1895, 324.

⁵1879, 196.

⁶1907, 567.

⁷1897, 259.

CHAPTER V
CONCLUSION

In reviewing these chapters it is found that the governor's appointive power was very limited under the first constitution, and even more so under the second, but under the third it was considerably extended, that is, relatively speaking.

Section 22, Article III of the first constitution, section 12, Article IV of the second constitution, and section 10, Article V of the third constitution provide that the governor shall appoint with the consent of the senate all officers whose offices are created by the constitution or by law and whose appointments are not otherwise provided for. Down to this point the three sections are alike. From here on section 22 names some local officers which it says shall be appointed in such manner as the general assembly may prescribe, while sections 12 and 10 prohibit the general assembly from appointing any officers.

With respect to making designated original appointments, under the first constitution (Sec. 20, Art. III) the governor could appoint a secretary of state, and under the third constitution (Sec. 28, Art. VI) he could appoint the justices of the peace of Chicago on the recommendation of the judges of that city.

Section 8, Article III of the first constitution, and section 11, Article V of the third constitution relate to the filling of vacancies during recess by making temporary appoint-

ments. Under the former the governor could make an appointment if the appointment is by the constitution vested in the governor and the senate or in the general assembly, while under the latter he can appoint to any office which is not elective.

Now as to the filling of vacancies in state offices: under the first constitution (Sec. 21, Art. III) the legislature appointed the state treasurer and the auditor, and the governor could fill a vacancy in either office if one occurred during recess. Under the second constitution (Sec. 22, Art. IV) he could appoint a secretary; and under the third constitution (Sec. 20, Art. V) a secretary of state, auditor, treasurer, attorney general and superintendent.

Under the first constitution (Sec. 4, Art. IV) the general assembly appointed the judges of the supreme and inferior courts during good behavior, and by section 8, Article III, the governor could fill vacancies if they occurred during recess. Under the second constitution (Sec. 9, Art. V) the governor could fill vacancies in the supreme and circuit courts if the unexpired term did not exceed one year in length and under the third constitution (Sec. 32, Art. VI) he can fill vacancies in any court under the same conditions.

As already noted, under the first state constitution the treasurer, auditor and the judges were appointed by the general assembly but the second (and also the third) constitution prohibited the legislature from appointing officers and so in place of it, it provided that the judges, the secretary of state, treasurer and auditor should be elected by the people.

This charge greatly reduced the governor's appointive power for by section 11, Article V of the first constitution (which was not reenacted in the second constitution) the governor could fill recess vacancies if the appointments vested in the general assembly whether the offices were created by the constitution or by law.

So in summing up it must be said that each of the three constitutions contains a general provision authorizing the governor to appoint all officers when no ^{other} method is provided; and the first and third constitutions contain a general provision for filling vacancies during recess. As to more specific provisions, under the first constitution, he could appoint a secretary of state, and if vacancies occurred during recess in the offices of treasurer and auditor and judges or other appointments of the legislature he could fill them. Under the second constitution he could appoint a secretary of state if a vacancy occurred, and likewise in the supreme and circuits courts if the unexpired term did not exceed one year. Under the third constitution he can appoint the justices of the peace of Chicago upon the recommendation of the judges of that city, fill vacancies in the offices of treasurer, secretary of state, auditor, attorney general, and state superintendent, and fill vacancies in the courts provided, of course, that the unexpired term does not exceed one year.

As to the removal power the first and second constitutions are absolutely silent on this matter, and according to the case of Field vs. People, discussed above, the power to remove is

not incidental to the power to appoint, and that the governor has only such powers as are expressly granted to him and consequently he did not have the power to remove any officer under either of the first two constitutions. But this is no longer the law for it is now generally held that if no tenure is fixed the appointee holds at the pleasure of the appointing power.

The third constitution (Sec. 12, Art. VI) authorizes the governor to remove any officer he may appoint for incompetency, etc. This suddenly cast upon him a tremendous power for it enabled him to dismiss any executive appointee he did not want in office and so gave him a powerful weapon to promote efficiency in state administration.

Thus far this chapter has dealt only with the appointive and removal power of the governor authorized by the constitutions; from here on it will deal only with such power as was authorized by the legislature unless otherwise specified.

Though the governor's appointive power under the constitutions is very limited it was greatly extended from time to time by the creation of new offices too many of which the governor was authorized to appoint; this is especially true of the period covered by the third constitution.

Most of the offices created, to which the governor could appoint, during the operation of the first constitution were of a temporary nature and in some cases the right to appoint was granted only temporarily. Including temporary appointments the governor's appointive power was rather extensive for this early period of the states history, and reached its maximum

in the '30's. After this decade some of the officers, that had heretofore been appointed by the governor were elected by the people and a few were elected by the legislature. Furthermore by 1840 the state practically had ceased to take an active part in internal improvements in which it was so extensively engaged in the '30's and which necessitated a larger corps of officials; and so at the close of this period the permanent positions to which the governor could ^{appoint} were very limited.

The temporary positions which the governor could fill during the operation of the second constitution were not many but the permanent positions to which he could appoint were much more numerous than under the previous period. And in the present period, due to such a great increase in population and wealth, the diversification of industries, the growing wants of society, and the increased complexity of our civilization, the state has greatly increased its activity for the peoples welfare and so a much greater number of officials is required to do its work, and consequently the governor's appointive power has increased accordingly.

It has already been noted that by the first and second state constitutions the governor had no removal power, but by the same process that the legislature increased his appointive power it also gave him a removal power. In many cases, in all three periods, he could remove both temporary and permanent appointments.

As for what grounds, the governor was authorized

remove there is no uniformity. In some cases he could remove at his own discretion, in others "for cause" and in still others for specified causes.

Although the legislature in the present period, authorized the governor to make removals in many cases, but this was unnecessary for the third constitution authorized him to remove any official he may appoint for incompetency, etc., and the supreme court in the case of Wilcox vs. People, (90 Ill. 186) discussed above, in construing the meaning of this clause said that the method of procedure rests entirely with the governor, and that he may adopt any mode of inquiry to ascertain the cause of removal, and that neither written charges, notice, nor hearing is necessary and that his action is not subject to revision by the courts. This practically gives him the power to remove at his own discretion.

In summing up the governor's removal power at the end of each period it is found that he could remove:

In 1848-

Members of the board of public works, inspectors who governed the penitentiary, warden of the penitentiary, commissioners of oaths in other states.

In 1870-

Any member of the boards that had charge of the state charitable institutions, commissioners of the penitentiary, commissioners of oaths in other states, police commissioners for East St. Louis.

In 1914-

Any officer he may appoint, and any sheriff if he lets a mob take a prisoner from his custody.

In a number of cases the governor could fill vacancies when he did not have the original appointment, and such positions at the end of each period were:

In 1848-

States' attorney, Judges of Probate Court, Board of Public Works.

In 1870-

States Attorneys, Board of equalization, Board of trustees of the University, Board of the Normal University.

In 1914-

Board of Equalization, Board of trustees of the University, Judges of the probate courts, judges of the courts of record, judges of the municipal courts, trustees in sanitary districts, and United States Senator.

Nothing has been said so far as to the governor's appointments requiring confirmation, but it is a general rule that where the governor appoints to permanent positions, whether under the constitution or the statutes, he must do so by and with the advice and consent of the senate. In some cases of vacancies this is not required, but if it is a "recess" appointment con-

firmation is usually required when the senate meets.

In summing up the appointments that the governor could make at the end of each period, they are found to be as follows:

In 1848-

Notaries Public, Public Administrators, Commissioners of oaths in other states, Loan and Transfer agents in other states, Trustee for the Illinois and Michigan Canal, Commissioners to investigate business corporations, Board of Inspectors to govern the Penitentiary, Adjutant General, Quartermaster, Paymaster, Aide de Camp.

In 1870-

Board for the Central Hospital for the Insane,
Board for the Southern Hospital for the Insane,
Board for the Northern Hospital for the Insane,
Board for the School for the Blind,
Board for the School for the Deaf,
Board for the Soldiers' Orphans' Home,
Board for Public Charities,
Board for Managers for the State Reformatory,
Board for Commissioners for the State Penitentiary,
Warden for the State Penitentiary,
Chaplain for the State Penitentiary,
Board of Police Commissioners for East St. Louis,
Kidnapping agents,
Notaries Public,
Public Administrators,

A Commission of Deeds and Bonds in New York City
 Commissioners of Oaths in other states
 Judge of the Common Pleas at Cairo
 Judge of the City Court at East St. Louis
 Commission of Arbitrators to adjust mail rates
 Directors of towns, interested, on railroad boards
 Canal Commission
 South Chicago Park Commissioners
 West Chicago Park Commissioners
 Board of the State Normal University
 Board of the Southern Normal University
 Board of the Illinois Industrial University
 Military Staff
 State Entomologist
 State Geologist
 A custodian of land records, maps and titles

In 1914-

	Members	Years
Board of Administrators, (to govern the 20 chari- table institutions)	5	6
Charities Commission (to investigate the chari- table institutions)	5	6
Board of Visitors (for each charitable institution)	3	6
Board of Trustees for the state Reformatory	5	5
Board of Commissioners (for each penitentiary, 2)	5	3

	Members	Years
Board of Pardons	3	3
Penitentiary Commission	3	
Canal Commission	8	2
Rivers and Lakes Commission	3	3
Deep Waterways Commission	3	2
Highway Commission	3	6
Highway Engineer	1	
Assistant Highway Engineer	1	
Fish and Game Conservation Commission	3	3
Board of Architect Examiners	5	4
A State Architect	1	4
Voting Machine Commission	2	4
Art Commission	8	4
Printer Expert	1	
Assistant Printer	1	
Buildings Laws Commission	7	
Illinois Park Commission	3	3
Lincoln Park Commissioners	7	7
South Chicago Park Commissioners	5	5
West Chicago Park Commissioners	7	7
Commissioners to preserve Forest Districts (for each district)	7	6
A board of Normal Trustees for each of four state Normals	5	4
A Board of Southern Normal Trustees	14	6
Trustees for the State Historical Library	3	2
Civil Service Commission	3	6

	Members	Years
Commission on Uniform Laws	5	4
Utilities Commission	5	6
Superintendent of Banking	1	4
Fire Marshal	1	4
Insurance Commissioner	1	4
Grain Inspector	1	2
Assistant Inspectors	3	
Deputy Inspectors	23	
Directors in Pawn Societies		
Directors in Wage Loan Companies		
Board of Health	7	7
Board of Dental Examiners	5	5
Board of Pharmacy	5	5
Board of Nurse Examiners	5	5
Board of Barber Examiners	3	2
Standard Food Commission	3	4
State Food Commissioner	1	4
Board of Labor Commissioners	5	2
Chief Inspector of private employment agencies		
A Superintendent, Assistant Superintendent and a clerk for each free employment agency (for each of eight agencies)	8	2
A Factory Inspector	1	4
Assistant Factory Inspector	1	
Deputy Factory Inspectors	30	
Inspectors of Mines	12	2
A Mine Rescue Commission	7	1

	Members	Years
A State Mining Board	5	2
A Miners' Examining Board	3	3
A Mining Investigating Commission	9	2
Industrial Board	3	6
Arbitration Board	3	3
Employers Liability Commission	12	
Notaries Public		4
Public Administrators		4
Public Guardians		
Commissioners of Oaths in other states		
Court of Claims Commissioners	3	4
Justice of the Peace for Chicago		4
Live Stock Commission	3	3
State Veterinarian		
Humane Agents	4	2
Inspector of Apiaries	1	2
Entomologist	1	2
Geologist	1	4
A Special Tax Commission	7	
Finance		
Military		
Adjutant General		
Quartermaster		
Commissary		
Paymaster		
Judge Advocate		
Surgeon		
Aids de Camp		

Board to test officers in Military tactics

Board to examine candidates for naval reserve

Commission to visit schools that have military training

These summaries are not intended to be perfectly accurate or complete for laws are constantly changed, appointments which appeared to be temporary may have been quite permanent, and vice versa; appointments may be made for an indefinite term and these may be very short or very long. Sometimes the exigency may not have arisen to call for the appointments which the law provided for. It is also true that the purposes for which an office was created may later on no longer exist.

A quite accurate list of offices, boards and commissions can be found in the Illinois Blue Book for 1913-4. This list also contains a number of boards and commissions whose terms are indefinite, and others that are very temporary. The exofficio boards are also given.

At the present time the governor has about 400 appointments to make but this does not include notaries public, public administrators, public guardians, and commissioners of oaths in other states; and it is said that there are about 5000 more officials and employees on the state's pay roll. What an army to transact the state's business! To transact an equal amount of work, no business house, worthy of the name, would tolerate such a multitude, and no firm could, unless it had a monopoly. A change must be made, and the proper way to begin is to divide the administrative affairs of the state into the following ten departments:

1. Charities and Correction
2. Public Works
3. Education
4. Trade and Commerce
5. Health
6. Justice
7. Agriculture
8. Labor and Mining
9. Finance
10. Military

At the head of each of those departments should be a "cabinet officer" or whatever he should be called. They should be appointed by the governor with the consent of the senate and removable at his pleasure. Each cabinet officer should be the head supervisor and the director of the policies of his chief or his party. It may be permissible or perhaps even advisable to appoint some of the other officials for party policy reasons, but nearly all subordinate officials should be appointed on merit, and should be retained in the service of the state as long as they show themselves worthy. It is only by long experience that an officer can become proficient, and when he becomes so it is a detriment to the state to discharge him.

Business firms retain all their employees that prove their worth and they are discharged only for business reasons, and when the state will conduct its administrative department as a business house does then will the government be economically and efficiently administered, and not till then.

There are all together too many boards and commissions. Much consolidation should be practiced. The step that has already been taken by putting all of the state charitable institutions under the management of one board is a wise one. Similar steps should be taken in other lines. As for example, all the normal schools and the University should be managed by a single board and likewise the penitentiaries and the state reformatory.. Other instances might be enumerated.

There should be no more officials than are necessary to transact the state's business. It will conduce to economy and efficiency to have a few officials constantly employed than to have many employed only a part of the time. Of course there are many instances when this is not true; as for example, in visitorial or investigational commissions, or a commission that has a definite thing to do in a certain part of the state.

With a system of state administration divided into departments, and these into the necessary bureaus, and these into sections and so on, a hierarchical system would be established making every official accountable to some officer above him, and all directly or indirectly responsible to the Chief executive. This would make a concentrated system which could be easily supervised with the governor at the apex and make him responsible for the whole administrative government.

With such a system the governor could correllate his plans and coordinate his actions and so make all departments, bureaus, and sections work together with the utmost harmony, economy, and efficiency. Only with such a system is it possible to approach

anything like perfection, in state administration. As it is now there is too much independence, no direct responsibility, little correlation and less coordination which leads to a confusion of plans, an overlapping of action and a general conglomeration of the state's administrative government.

To make way for this system is the "short ballot". The governor, lieutenant governor and the state legislators are about the only state officers that ought to be elected by the people. The governor is much more competent to appoint the administrative officers than the people are to elect them, and at the same time make him responsible for them. As it is at present an elector has too many candidates to vote for and consequently can not vote intelligently on most of them. He may be very ignorant as to the qualifications of many of the candidates and even more so as to the duties they have to perform. As for the governor he is generally familiar with the duties to be performed, and if he is not he can easily inform himself, and as to the qualifications of his appointees, he has ample opportunity to investigate, and that can not be said for an average elector.

In 1905 a civil service law was passed providing that the appointments in the state charitable institutions over which the state commissioners of public charities exercise supervisory or visitorial powers be classified and thereafter be appointed on merit after passing a competitive examination. Later on this law by amendments was greatly extended to cover many other appointments, but a number of classes were exempt and among these were the governor's appointees that require confirmation by the senate, and

as nearly all of his important appointments do, this law has very little effect on the governor's appointive power.

It is no more than right that the governor should not be required to make requisition upon the civil service commission to suggest successful candidates for his important appointments for he ought to be free to judge of the fitness of his immediate adviser and assistants; but most officials, that are not policy directing, should be appointed on their merit, and promoted as they show proficiency in certain lines of work.

The civil service law is a far reaching step in the right direction and should be extended. It paves the way for making faithful and proficient service for the state a profession, and only in that way can the highest stage of economy and efficiency be attained.

The "short ballot" would also be a step in the right direction for county and municipal elections, the elector could also, to a limited extent, make very intelligent use of the initiative, referendum and the recall, and so put into his hands powerful weapons to have a direct voice in legislation if necessary and make incompetent or irresponsible officials "come to time".

It is unnecessary to say that there are too many elections. The number of elections in addition to the great number of candidates is enough to make an elector not only lose interest but even to become disgusted. There should be two elections a year no more and no less - a primary election at which to nominate candidates, and a general election at which to elect them. Such

elections would come often enough for an expression of opinion, and also often enough to keep the people interested.

Another move in the right direction would be to separate national, state, and local issues. This could be accomplished by electing the President and Vice-President of the United States (as now) and national legislators in leap years, making the terms of legislators also four years. State elections should be held in even years alternating with the leap years, so as to make the governor, lieutenant governor (as now) and all state legislators hold office for the same term as the national officers, and county and municipal elections should be held in odd years, making a two year term, and the party label should be stricken from the ballot. All judges, if any are to be elected, should be chosen on this local election day so as to keep them independant of political considerations.

Under such a division there would be no confusion of national, state and local issues to dumfound the voter. The issues in each political division would then be decided more nearly on their merits, and the merit of a candidate would count for much more than it does now, and that would be especially true in sections of local divisions where merit often receives little consideration and when it is often so much in want in the successful candidate. Barring the party label from the local ticket would clear the way for a much more competent and meritorious class of officials than are now in control of local government.

As an elector does a service to the state by studying

the issues of a campaign and investigating the qualifications of candidates, and goes to the polls to pass judgment thereon with his ballot, it would be no more than right to have the state pay him for that service. In fact it seems like justice to do so. One dollar for a primary vote, and one dollar for a vote at a general election would be ample, but no person should be allowed to vote unless he paid a tax at least equal to the amount the state paid him for voting. This would make no additional expense to the government for it would simply collect two dollars more from each elector and return it to him when he had performed his duty as an elector. Under present conditions ^{are} large sums of money used and a great deal of time wasted to educate the voter, to interest him and get him to go to the polls. Party committees and candidates for such purposes spend immense sums every year, and most of it represents waste and besides they don't get the vote out. If the government would pay each voter two dollars annually to cast his ballot at the two elections, it would be no economic waste for nobody would spend any time to interest the voter and to get him to the polls. Besides that would bring out practically the total vote. It seems that such an act would do more to interest the voter and purify elections than any other action the state could take for it would destroy the politician's job to get out the vote on election day.

Note

By an amendment to the state constitution in 1904 the general assembly was authorized to enact certain special legislation for the City of Chicago. And by virtue of the authority vested in the legislature by this amendment, it created a municipal court for the City of Chicago to supersede the courts of justice of the peace and consequently the governor does no longer appoint justices of the peace for that city for the office has been abolished by statute, but nevertheless Section 28, Article VI, of the present constitution which provides that the governor may appoint justices of the peace for the City of Chicago has not been repealed, and the legislature may at any time again create justice of the peace courts for that city, and the governor appoint the judges thereof.

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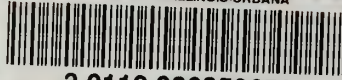
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